Parliamentary Practices in India

S. L. SHAKDHER
Secretary, Lok Sabha, New Delhi

RESEARCH : DELHI

Rs. 25.00

PRINTED IN INDIA

Published by RESEARCH PUBLICATIONS IN SOCIAL SCIENCES, 2/44, Ansari Road, Daryaganj, Delhi-6 and printed at R. P. Printers, 1526-B, West Rohtas Nagar, Shahdara, Delhi-32.

PREFACE

These writings on some aspects of parliamentary system have appeared over the years in various Journals, in India and abroad. In response to suggestions received from friends from time to time. these are being brought out in one volume to help those, interested in the subjects. The writings are not on inter-related topics and no attempt has been made to link one with the other. Each article is independent and self-contained.

There is a belief held in some quarters that our parliamentary procedure is the proto-type of the procedure obtaining in the British House of Commons. Though there is similarity between the two systems in matters of broad principles, there is wide difference in details and actual working : this has been shown in the three comparative studies, included in this collection. Moreover, our system embodies some new concepts, not to be found in British system. However, another study is required to set out all those differences in their proper perspective.

S.L. SHAKDHER

Lok Sabha, New Delhi

THE AUTHOR

Shri S.L. Shakdher has been Secretary of Lok Sabha since 1964. He became the First Secretary of the Department of Parliamentary Affairs which he had helped in creating and organizing from its inception in 1949. He was also appointed Officer on Special Duty in the Constituent Assembly (Legislative). Subsequently, he was appointed Deputy Secretary in the Provisional Parliament Secretariat and later in 1953 Joint Secretary in the Lok Sabha Secretariat.

In 1951-52, Shri Shakdher went abroad and studied the procedures of the House of Commons and the House of Lords in U.K., *Dail Eireann* and the *Seanad* in Ireland, National Assembly and the Council of Republic in France, Chamber of Deputies in Rome and the Swiss Parliament. On his return he was entrusted with the task of drafting the first Rules of Procedure and Conduct of Business in Rajya Sabha. He has been associated with the working of the Parliamentary Committees since their inception in 1950.

Shri Shakdher is the Vice President of the Association of Secretaries-General of Parliaments. In recognition of his contributions to the deliberations of the Association, he had the unique distinction of being elected in 1957 as a member of its Executive Committee when he was not the head of the Secretariat of the National Parliament who alone is eligible for such election.

He is the co-author of the monumental work 'Practice and Procedure of Parliament', which has been widely acclaimed in India and abroad.

CONTENTS

1

AN IDEAL PARLIAMENTARY OFFICIAL

WHEN one enters th e career of service as a Parliamentary Official, little does one know that it is the beginning of a career which is full of hazards, at times painful, at times soothing and which at the same time holds out a promise of making him a perfect or a near perfect man. One at first believes that it is yet another job in the line of a civil servant and it gives the same amount of joy or sorrow as may be the case with a normal job under the executive Government. The change that comes over the official is imperceptible, slow and is discernible only towards the end of his career. He will emerge as a full-blown person if he has withstoop all the shocks and vicissitudes and taken his full share in the joys of the moment over long years of service.

Service to the Country

A parliamentary official has to do a good deal of study, assimilate the facts, and present a picture or display an approach which is regarded as objective in character. He has an honourable position in society, a satisfaction that in the discharge of his service to Parliament which is the only guarantee against tyranny of the people he is serving the country and the nation. If he assists in maintaining the correct and high standards which Parliament endeavours to lay down, he would have done a tremendous service to the millions of his countrymen. The good work of Parliament results in happiness of the people, in the quickening of the initiative of the nation

Article published in ;—
(i) Silver Jubilee Souvenir of Parliament Secretariat.
(ii) Journal of Parliamentary Information ; Vol. I, No. 1, Page 20.

and in the raising of the standard of life generally and much depends upon a Parliamentary Official as to how he assists in such endeavour.

Attitude of Objectivity

A parliamentary official unlike his counterpart in the civil service comes daily in contact with all sections of political opinion in the country. A Government is generally composed of persons who belong to a party having one ideology. A civil servant is required to execute the policies laid down by Government, and he knows his master's mind and follows the policy A parliamentary official on the other hand has to serve simultaneously both the Government of the day and those who are opposed to it. He has to hold a balance between the ruling Party and those who are opposed to the very existence or ideologies of that Party. This involves a tremendous strain and requires a mind and approach which must be regarded as uncommon. Proceedings in Parliament are oftentimes compared to a parliamentary battle-field, where shootings take place without bullets or arrows but which are much sharper and more piercing. One has to have always his wits ready at his command, an attitude of objectivity and a sense of fairness when tempers run high and the opposing parties are battling feverishly to win their points. In such prevailing tempers and excitements one has to keep the mind cool and display sobriety so that one does not get mixed up in the whirlwind of feverish activity which proceeds at a more rapid pace than one can think of. One has to hold the balance between the opposing viewpoints in such a way as not to wound the feelings of anybody. Even a slight variation in his attitude might cause unlimited harm not only to the official but also to the whole system of relationship between Parliament and parliamentary officials.

Spirit of Tolerance

Whatever political and other views a parliamentary official may have, he has to undergo such an acute transformation of ideas that one wonders whether he has not become neutralised or his mind has not ceased to function. On a closer study one will find that that is not so. By constantly hearing opposing viewpoints and arguments one inevitably comes to the conclusions that these various contacts lead him to moderation and an understanding that each one has a viewpoint. A kind of tolerance enters into the mind of

the official and he becomes truly disinterested in any proposition before him as enumerated by our great sages and particularly by the sacred "Gita".

Supply of Factual Information

A parliamentary official ceases to attribute motives and judges matters, as it were, from a distance, unconcerned with the drama as to the merits or demerits of the respective policies and records his opinion in an objective way. He does not concern himself with what views a member has. He has to help all alike and just in the same way as he may help a member whose views may happen to coincide with his own views. If a member wants any information or reference he will gladly give it to him, bearing in mind always that he does not draw conclusions and does not argue for or against the viewpoint of the member. His business is to give the member factual information and it is for the member to draw inferences and conclusions and make such use of it as he may like.

Patience and Self-Control

A parliamentary official has to have an enormous fund of patience. A smile on his face, a cheerful look even in the face of a deliberate provocation will stand him in good stead. He will soon understand that such a provocation came as a result of the agony of the moment or something having gone wrong somewhere. A member appreciates nothing but patient hearing from a parliamentary official. If a member has exceeded the limits of decency or decorum he comes later to correct his own mistake. A member invariably tries to keep excellent relations with the official and even if in a particular instance he has deviated from this normal rule it is more due to some exceptional circumstances than any desire to be discourteous or unreasonable. Generally members desire nothing but to maintain cordial relations and to pass over petty errors or omissions on the part of Officers. Sometimes, however, a provocation may be over a very trival matter. A member may not have received a visitor's card applied for by him, or he may have been stopped by somebody at the gate or may not have received a reply to his enquiry, or may have a suggestion which he wishes to be implemented quickly and the like. A parliamentary official may well consider that the temper displayed by a member is not commensurate with the gravity of the offence. But if he exercises self-control,

and deals with the situation calmly, he will soon find that he is richly rewarded in that matter is settled to the satisfaction of both.

Attitude of Greatness

The House represents the sovereignty of India and each member is a part of that sovereignty. The attribute of greatness is, among other high and noble things, that occasionally it gets flared up over a small matter, not so much to expose that incident, but to assert its authority. If one realises this basic principle one can feel reasonably fortined by the belief that ultimately in contact with those who compose a focal institution even a small person, in some measure, however infinitiveiy small it may be, benefits in the long run in the crucible of experience.

Avoiding Publicity

The work of a parlimentary official is devotion to duty, unruffled by uninformed criticisms, unmoved by the praise of the excessively indulgent and unmindful of the material advantages. He shuns publicity, he aspires for no cheap popularity. His only desire is to work whenever called upon—morning, evening, night or mid-day. His comfort is that he is conscious of the useful work that he is doing ; he comes into contact with individuals who are responsible for shaping the destiny of people, for better or for ill, and his ambition is that the car of Parliament, which is the one guarantee against all that is evil, is on the right road and is well geared and oiled.

Upholding the Dignity of the Speaker

A parliamentary official is an adviser to the Speaker. The Speaker is the embodiment of impartiality and represents the sovereignty and dignity of the House. There are a large number of activities which a parliamentary official has to discharge on behalf of and in the name of the Speaker. He has to give decisions; he has to record opinions and he has to advise the Speaker. It goes without saying that in order that he is able to discharge all these functions to the satisfaction of all concerned he has to partake in some measure, however small, of the qualities of the Speaker. He has to uphold the name and dignity of the Speaker not by any device of propaganda, not by any underhand means but by the straight road of his actions which must be based on honesty, sincerity of purpose and impartiality of outlook. He has to act in the wider national interest

uninfluenced by any personal considerations or views of his own. He has to subordinate the self to the requirements of the country as a whole and eschew any thoughts of sectional or short range interest.

Advising the Parliamentary Committees

By far the most important function of a parliamentary official is to advise parliamentary committees. It is a task which demands great qualities of mind, judgment, maturity of thought, etiquette and ability to express in a clear and well knit language. The first duty of an official attending on a parliamentary committee is to see that its decisions are carefully noted and put in a language which is dignified, courteous and of a standard expected of a parliamentary committee. His function is to depict truth based on facts from which conclusions might themselves emerge. He has to avoid unnecessary superlatives, words and phrases which are harsh in their meaning or tone or which may tend to exaggerate a situation or a fact or minimise the effect that is intended to be created. In short, the language must be soft, forceful in its import and portray facts as can be reasonably attempted. A parliamentary official has to hear a mass of evidence tendered before committees, has to read and digest equally voluminous records and papers and sift facts, reconcile incom patibles and produce memoranda in easily assimilating forms and indicate the conclusions to which they lead for the use of committees. He has to put committees wise on the activities of the administration, on the operation of the laws and rules made by Government and suggest directions in which reform is needed. He has to place before the Committees possible implications of a suggestion so that no aspect of it is ignored before they come to a final decision. He has to note the decisions of the Committee and of the House carefully and watch on behalf of both whether action is being taken. He has to see that a decision arrived at by a committee on a Bill is properly embodied in the re-draft of the particular clause or portion of the Bill, that there is no ambiguity and that the intention has been faithfully carried out.

The Committee recognises in the Parliamentary official a friend and guide. The members will easily and quickly be influenced by the advice of the official because they know it is impartial and objective in essence. Government, they know, is after all committed to a policy and the various representatives on their behalf will somehow uphold that policy and elucidate it in that light. This is

good so far as the understanding of the problem or viewpoint of the Government is concerned; but a Committee in order to come to its judgment must know the other side also and then on balance come to a correct decision on the advice of some one who is not interested in either viewpoints.

A parliamentary official must have a keen sense of perception, quick grasp of essentials and non-essentials and nimbleness of mind. He has to listen to a lot of relevant and irrelevant discussion, evidence of speeches; but he must be quick to take note of the points which have a bearing on the subject under discussion, must have ability of quickly putting them together and in a language which is acceptable to all the various sections of opinion in the Committee. Some one once compared the proceedings in a Committee to a gush of water from a spring which emits both clear and muddy water at a very high speed. The person who is anxious only to rescue the pure water from the impure must be ready with his buckets to seize it immediately for it is intermittent and occasionally and for short durations it is crystal clear. Similarly a parliamentary official must be quick to catch the crystals in a series of speeches or discussions as quickly as he can for they may soon get mixed up with the impure which come immediately in their wake.

Knowledge of Men and Affairs

A parliamentary official must have encyclopaedic knowledge. He must read the daily papers, reports, books, periodicals and be posted with the latest and up-to-date information on all matters. He should be current in regard to foreign affairs, matters relating to Defence, Railways, Labour, Education, Health, Agriculture, Scientific Research, to mention a few, and in short he must epitomise in his mind the knowledge and latest facts about the whole activity concerning life, nation and the world. He may be called upon to handle any of these matters in the Committee or in the House and unless he has a background, unless he has a full grasp of the matter, he may soon find himself incapable of dealing with it. He has to ensure that he does not grow static in a changing world scene or events. He has to deal with dynamic events, and dynamic personalities and be abreast of the basic causes that lead to such events and understand vital forces at work. He has to have knowledge and yet wider knowledge of the men, events and affairs and he will realise that each experience is perhaps on a higher level than the previous one

for it carries subconsciously somewhere the memory of the past success and failures.

All Work is Alike

All work is alike to him. It may be a minor administrative matter or a big question of policy. It may relate to distribution of papers to members, issuing of cards, printing of parliamentary papers, residential accommodation, T.A. and D.A. or it may relate to the development or problems of the automobile industry, the rules regarding recruitment of I.A.S. and I.F.S. officers, the International Treaties, the Railway Workshops, the Fertiliser Factory, Shipyards, Aircraft Factory, Atomic Energy, Bank Award and so on. Everything has to be attended to with equal care and thought.

Resolving Complicated Matters

All matters which he handles are combustible in character. A Member brings in a question, a resolution, or a Bill or a Motion and is vitally interested in the matter. His constituency is involved, his position in the trade union is affected, or it is a social matter to which he has devoted his whole life, and one may suddenly find that a rule comes in the way—the matter should appropriately be dealt with in a State Legislature or is purely of a local interest or is under the adjudication of a Court—and he may experience some difficulty in getting it admitted. But it is not enough that the rule is quoted to a member or he is dealt with curtly. The Parliamentary official has to resolve the matter and give him satisfaction, advise him on the re-draft of the matter which may make it admissible and deal with it in a hundred other ways so that the matter is dealt with on a human plane in the full knowledge of the implications involved and the member is reasonably satisfied with the official in any conclusions that he may arrive at.

Quickness of Action

A parliamentary offiical has to be quick in his work. He has to deal with the matter as soon as it arises and give it personal attention. If he does not deal with it immediately he may not as well deal with it at all. The time factor is of great essence in dealing with parliamentary work. A Member gives notice of an adjournment motion, calling attention a question a resolution, and it has to be dealt with before the time and date when it has to be taken up.

Sometimes the official has only a few minutes or hours to deal with the matter. He must always be aware of the current and the latest position so that he can advise when the matter arises. He has always to be conscious that his advice has to be reasonable and accurate. He works under the public gaze as it were and any mistake on his part becomes public sooner than he will imagine. He has to be conscious of this fact always so that it makes him supple of mind and quick of action and reasonable in his approach. He has to grapple with to many situations at a time. In parliamentary work many things get crowded in a short space of time and a parliamentary official has to keep his presence of mind in order that he may be able to handle them quickly and in the minimum time possible. He has to keep note of all procedural matters, do research every day as the work in the House or Committee proceeds, keep in touch with the precedents and bring the rules and practices up to date. He has to take care that the pressure of work and tensions which are created by the importance and urgency of a matter do not have the better of him. He has always to apply the tone of moderation to his work and devise methods which may enable him to attend to it quickly.

Respect to Members

A parliamentary official has to bear in mind that members are generally sensitive. He has to study each one of them. He has to be fully conscious of the fact that a member represents hundreds of thousands of people who have returned him to the House. A member is a symbol of the collective strength of the people of his constituency and has to be approached from that standpoint. What he says may be therefore important and valuable for he speaks on behalf of his constituents. He represents their collective voice, collective wisdom and collective thought. He cannot therefore be lightly treated and due consideration has to be shown to him. In honouring the member we are honouring the people who have chosen him as their representative. While serving and understanding him we are understanding the people whose aspirations he represents. It is, therefore, a complex task, a task which is fascinating and helpful and when a problem which a member poses it too big must we wonder why it should be so for it is not his individual problem but the problem of the many.

Part of the August Body

A Parliamentary official generally feels youthful and full of energy in

the company and presence of such an august body of which mentally and physically he makes himself a part. At times he feels weary of the problems that face him. Both are part of him and shape him into what he is and out of this constant conflict, struggles and contentment a newer and newer personality is arising in him and gives him a glow which makes him far superior to what he was when he started. "He has much that gives him an equilibrium of mind and spirit, a calm and unhurried outlook on life which refuses to get flared and flustered at changing events."

An Ideal to be Cherished

I write this with a great sense of humility and profound knowledge that it is only an ideal which may be difficult to attain. This is my idea of what a parliamentary official ought to be and I have come to these conclusions after observing the working of Parliaments not only in India but abroad and also after having intimate conversations with parliamentary officials of the various parliaments. I have always felt that the basic approach of the numerous officials is the same and there is much in common in the functions and aspirations of parliamentary officials wherever they may be in this wide world. Some one has aptly remarked that it is a study in character, reformation and purification of the nobler instincts of man and a resolve to attain to a yet higher life—all rolled into one.

2

PRIME MINISTER AS A MEMBER OF THE LOWER HOUSE : POSITION IN VARIOUS COUNTRIES

THAT the Prime Minister should be a member only of the Lower House was the subject-matter of debate in Lok Sabha during the Budget Session of Parliament in 1966, when a Private Member's Bill seeking to amend the Constitution to that effect was discussed. The position obtaining in the various countries in this regard is given below :

United Kingdom

In the U.K., the office of the Prime Minister[1] has not been established by legislation ; it is only conventional though its existence has been recognized by statutes.[2] The authority of the Prime Minister was firmly established only in the late ninteenth century by Disraeli and Gladstone, who made thorough use of the effects brought about by the Representation of People Acts and the development of Party System in Britain.[3]

[1]The institution of Prime Minister, in the modern sense, first came into prominence in the U.K. with the Ministers of Sir Robert Walpole, 1721-1742, and William Pitt (the Younger) 1783-1801, and 1804-1806. It was brought about by a combination of several factors including royal confidence, pre-eminence among ministers, patronage as First Lord of the Treasury, and specially control of the House of Commons.—*See* Hood Phillips : *Constitutional and Administrative Law*, (3rd Edn.), 1962, p. 286.

[2]The Prime Minister is mentioned in the Treaty of Berlin, 1878; in a Royal Warrant of December 2, 1905, which gives him precedence next after the Archbishop of York; in the Schedule to the Exchequer Estate Act, 1917: in the Ministers of Crown Act, 1937; in the Physical Training and Recreation Act, 1937; in the House of Commons Disqualification Act, 1957; and the Chevening Estate Act, 1959.

[3]*Ibid.*

It is a settled rule that the Prime Minister must be either a peer or a member of the Hous of Commons.[4] No peer has, however, been a Prime Minister after Lord Salisbury resigned in 1902. In 1923, a question was raised whether it was then possible for a peer to become Prime Minister. The illness of Mr. Bonar Law, the then Prime Minister, left King George V, with a choice between Lord Curzon, Foreign Secretary and Mr. Baldwin, Chancellor of the Exchequer. The King chose the latter, both on personal grounds and because Mr. Baldwin was a member of the House of Commons. This was generally regarded as a decisive demonstration of the need for a Prime Minister to be in the House of Commons.

Again in 1940, when Mr. Neville Chamberlain resigned, the office of Prime Minister, suggestions were made that Lord Halifax should take over the Prime Ministership. Instead, Sir Winston Churchill was asked by the King to form the Government. Lord Halifax himself said in this regard that "he felt that his position as a peer, out of the House of Commons, would make it very difficult for him to discharge the duties of Prime Minister in a war like this. He would be held responsible for everything, but would not have the power to guide the assembly upon whose confidence the life of every government depended" [5]

[4] In the 18th century, when British Cabinets were almost exclusively composed of peers, the leading Minister curiously enough was recruited most of the time from the House of Commons; in the 19th century, when Commons came to form the bulk of the Cabinet, the Prime Minister was, more often than not, a peer. But with the expansion of the franchise and the reduction in the powers of the Lords, notably by the "Parliament Act" of 1911, it became increasingly difficult for a peer to exercise the Premiership effectively. Recently Lord Home had to give up his peerage in order to take over the office of the Prime Minister on resignation of Mr. Macmillan.

[5] *See* Winston Churchill : *The Second World War* (2nd Ed.), Vol. I, p. 597.
It may be mentioned that the Ministers of the Crown Act, 1937, as amended, provides in effect that at least three ministers in addition to the Lord Chancellor and a number of Parliamentary Secretaries must be in the House of Lords. On the other hand, certain offices are usually held by members of the House of Commons. Since the House of Commons has sole responsibility for finance, the Chancellor of the Exchequer, the Financial Secretary to the Treasury and the Financial Secretary to the War Office must be in that House. This did not apply to the First Lord of the Treasury, who was usually the Prime Minister. Under the Ministers of the Crown Act, 1937, the Prime Minister must be the First Lord and this implies that the First Lord must be

However, it has been felt that the Prime Minister should be a member of the House of Commons, since the parliamentary form of government envisages that the Prime Minister should, with his colleagues, be responsible to the House of Commons, and he should also be able to justify his policy in that House.[6]

The weight of present day opinion in the United Kingdom is in favour of the view that it is undesirable and impracticable for the Prime Minister to be a member of the Lords : To quote Ivor Jennings[7] :

> The Government owes a responsibility to the House of Commons alone. The composition of that House determines the nature of the Government. A vote in that House can compel the Government either to resign or to advise a dissolution. The Prime Minister is not merely chairman of the Cabinet ; he is also responsible for the party organisation. That organisation matters in the House of Commons and does not matter the House of Lords. Even when the Government has a majority in the House of Lords, the effective decisions are taken in the Lower House. An amendment to legislation is generally accepted in the House of Lords by the Government only ad referendum. It is, in practice, essential that the Prime Minister should have his finger on the pulse of Parliament, and that is in the House of Commons. The most important reason is, however, that the Opposition would insist on having the Prime Minister in that House in order that he could be cross-examined and criticised. He, in his turn, would want to be in that House in order that he might defend himself and his Government in the form in which he was most strongly attacked.

Canada

In Canada, a convention has been established that all members of the Cabinet must either have seats in Parliament, which has an Upper House styled the Senate, and the House of Commons, or secure seats within a short time. There is also a convention that all Ministers in charge of departments of Government should

in the House of Commons. *See* Ivor Jennings : *Cabinet Government* (3rd Edn.), 1959, p. 70.

[6] *Ibid*, p. 21.

[7] *Ibid*, p. 24.

normally be Members of the House of Commons. Ministers without Portfolio can be members of either House.

Following established precedent or convention, the Cabinet is always responsible to the House of Commons. When the Cabinet (the Government) suffers a defeat on a Government Bill, or a vote of censure or on a motion of want of confidence in the Commons, the existing Government or Cabinet must either resign or request a dissolution from the Governor-General. If it resigns, the Governor-General may call on the leader of the Opposition in the Commons to form a new Government.[8]

Ireland

In Ireland, where the Parliament has two Houses, *viz.*, a House of Representatives called *Dail Eireann* and a Senate called *Seanad Eireann*, the Prime Minister is appointed by the President and must be a member of *Dail Eireann*.[9]

Australia

In Australia, the Prime Minister has no constitutional but only a rare statutory recognition. The Constitution carries no reference to the party which he leads at elections, to the majority party which he leads in the House of Representatives, or to the team which he leads as a Cabinet. The Governor-General sends for the party leader who has the best prospect of forming a Cabinet backed by a stable majority in the House with a view to commissioning him as Prime Minister. The other House of Parliament is known as the Senate.[10]

France

In France, the President of the Republic appoints the Prime Minister and upon the latter's approval, the other members of the Cabinet.[11] The Government is responsible to the Parliament which comprises the National Assembly and the Senate, and can be overthrown by a vote of censure or a vote of no-confidence.[12] Under the

[8] *Canada Yearbook* 1963-64, pp. 67-68.

[9] Constitution of Ireland 1937. Arts. 28. 1 & 28.7(1)—*See* A. J. Peaslee; *Constitution of Nations* (2nd Edition), Vol. II. 1956, pp. 451-52.

[10] L.F. Crisp : The *Parliamentry Government of the Commonwealth of Australia* (2nd Ed.). 1954, pp. 196-97.

[11] *See* "The New French Constitution." 1958. Art. 8.

[12] *Ibid.* Arts. 20, 49 & 50.

Constitution, membership in the Cabinet is incompatible with a seat in Parliament, as well as with any function of professional representation on a national level, or any public employment or any other professional activity. A member of Parliament who enters the government must give up his seat in either House.[13]

West Germany

In West Germany, the Federal Chancellor (*Bundeskanzler*, Prime Minister) is nominated by the Federal President and must be elected without debate by the *Bundestag*, which is the Lower House of the federal legislature the Upper House being *Bundesrat*. It the person so nominated is not elected, the *Bundestag* may, two weeks later, elect a Federal Chancellor without presidential nomination, but to be successful, a candidate must receive an absoulte majority of votes. If there is still no Chancellor,. another ballot is taken in which plurality is sufficient. In the latter case, the Federal President may either appoint him or dissolve the *Bundestag*, in which case, new general elections must be held.[14]

Position in India

In India, the office of the Prime Minister in the modern sense, originated on the 15th August 1947, when the country attained independence and Shri Jawaharlal Nehru became the first Prime Minister of India. The office has since been given statutory recognition in the Constitution.[15]

The Constitution of India has followed more closely the British pattern, and parliamentary procedures and practices have also been modelled upon those of the British Parliament. However, unlike in the United Kingdom, the Indian Constitution expressly gives the office of the Prime Minister a distinctly superior position by making him the head of the Council of Ministers.[16] In the United Kingdom,

[13] *Ibid.*, Art. 23; *See* also Robert G. Neumann: *European and Comparative (Government*, 1960, pp. 250 & 256.

[14] *Ibid*, p. 422. *See* also "Constitution of Germany," Art. 63 and Peaslee, *op. cit.*, p. 41.

[15] *See* Art, 74(1).
Justifying the provision, Dr. B.R. Ambedkar, Chairman of the Drafting Committee, said that there could be hardly any objection to give statutory recognition to the position of the Prime Minister which was established by convention in England—*See* C.A, Deb, 30-12-1948, Vol. VII. p. 1159.

[16] Art. 74(1).

although in practice, the Prime Minister holds a superior position, he is, at least in theory, to be described as *primus inter pares*, first among equals.[17]

The Prime Minister in India is appointed by the President who also appoints the other Ministers on the advice of the Prime Minister. The Council of Ministers is collectively responsible to the House of the People (Lok Sabha).[18]

Two special features of the parliamentary government in India deserve mention in this regard. Ministers of the Cabinet are, at the same time members of Parliament also. A rigid adherence to this rule is likely to deprive the Government of the services of men of ability, who may not, for the time being, be members of the Legislature. To avoid such situation, a person who is not a member of either House of Parliament can also be a Minister. The Constitution, however, provides a maximum period of six months for such a Minister to become a member of the Legislature. During this period such a Minister has the right to attend both Houses and to participate in the discussion of the House attended. The only restriction placed upon him is that he cannot vote. Similarly a Minister who is a member of either House has the right to appear in the other House and participate in its proceedings except for voting[19]. But nowhere has it been stipulated that these provisions and conventions do not apply to a person who may be chosen to the Prime Minister. Nor has it been insisted or mentioned that the Prime Minister should only be a member of the Lower House and not of the Upper House. The Constitution of India is conspicuously silent on this point and has left the selection of the Prime Minister from amongst the Lower House to convention.[20]

[17]M. V. Pylee *Constitutional Goverrment in India* 1965. p. 40, *See* also Wade & Phillips : *Constitutional Law* (6th Ed.), 1960, pp. 24—26.

[18]Art. 75.

The Cabinet System of government under the Constitution is established also in the States. In every State there is a Council of Ministers headed by a Chief Minister, just like the Prime Minister, who heads the Central—Cabinet. *See* Arts. 163 & 164.

[19]*See* Arts. 88 and 177.

[20]Both Shri Jawaharlal Nehru and Shri Lal Bahadur Shastri were the members of the Lower House. But this convention was broken when Smt. Indira Gandhi, a member of the Upper House, was chosen as the Leader of the Congress Parliamentary Party and assumed the office of the Prime Minister on January 24, 1966.

The selection of a person to the position of a Prime Minister or Chief Minister figured in the discussions in the Constituent Assembly also. The Draft Constitution of India, as prepared by the Drafting Committee under the chairmanship of Dr. B.R Ambedkar, included a Schedule containing instructions to the Governors of the States regarding the manner of selection of their respective Council of Ministers. Clause (2) of the Schedule read[21] :

> In making appointments to his Council of Ministers the Governor shall use his best endeavour to select his ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature, those persons...who will best be in a position collectively to command the confidence of the Legislature In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among the Ministers.

As is evident, the emphasis on the selection of the Chief Minister was only on a person who, among with his colleagues would be in a position to command the confidence of the Legislature irrespective of the fact of his being a member of either House of Legislature.

A Schedule similar to the one containing instructions for the Governors was also proposed to be included in the Draft Constitution as regards the President for the appointment of Council of Ministers at the Centre. Finally, however, the Schedule containing instructions to the Governors was deleted and the one containing instructions to the President was not included in the Draft Constitution. Explaining the reasons why it was not found necessary to include these Schedules in the Constitution, Shri T.T. Krishnamachari, a member of the Drafting Committee, stated[22].

> It has now been felt that the matter should be left entirely to convention rather than be put into the body of the Constitution as a Schedule in the shape of Instrument of Instructions, and there is a fairly large volume of opinion which favours that idea. Therefore we have decided to drop these Schedules, because it is felt to be entirely unnecessary and superfluous to give such

This convention was also broken twice in the States when in 1952, the Chief Ministers of Bombay and Madras were members of the Upper House.

[21]*See* Draft Constitution of India, Fourth Schedule : Instructions to the Governors of States, p. 168. *See* also *C.A. Deb.*, 30-12-1948, c. 1157.

[22]*See C.A. Deb.*, 11-10-1949, p. 114.

tions in the Constitution which really should arise out of conventions that grow up from time to time, and the President and the Governors in their respective spheres will be guided by those conventions.

Recently, selection of the Prime Minister from amongst the members of Lower House was advocated both in Parliament and outside it. On March 18, 1966, a member of Lok Sabha introduced a bill, the Constitution (Amendment) Bill, 1966, which *inter alia* sought to amend the Constitution to provide explicitly that the Prime Minister should be a member of the Lower House.[23] The objects and reasons set out in the Bill stated :

> The highest traditions of Parliamentary democracy, with a bicameral set-up, demand that the Council of Ministers at the Centre and in the States should consist mostly of members who are directly elected by the people, and that the Prime or Chief Minister should in no circumstances be a member who has been elected indirectly.

The Bill was discussed in Lok Sabha and the motion for consideration was negatived. The following were the salient points made during the discussion[24] :

(i) It would be a travesty and mockery of the spirit and the letter of the provisions of the Constitution if the Council of Ministers was headed by a person who was not a member of that very House to which the Council of Ministers was collectively responsible *i.e.*, Lok Sabha.

(ii) In financial matters, Lok Sabha alone enjoyed a predominant power, and the financial part of the constitutional prerogative was the most important in a democratic Constitution. It was therefore desirable that the Prime Minister should belong to Lok Sabha.

(iii) Having regard to the proper working of a Parliamentary democracy and in conformity with the principle that the people's representatives should have a real say in the administration, it became a categorical imperative that the Prime Minister should only be a member of Lok Sabha.

(iv) According to a well-established convention in the British House of Commons, it was the Prime Minister's duty to

[23]Bill No. 18 of 1966, introduced by Shri H.V. Kamath.

[24]*See L.S. Deb.*, 15-4-1966 and 13-5-1966.

express the sense of the House on formal occasions, on motions of thanks or congratulations or motions of condolence. It would be perverse if the sense of Lok Sabha should be representatively expressed by some person, who, however eminent he or she might be in some other domain, did not belong to that House.

(v) The supremacy of Lok Sabha had been recognized and enshrined in the Constitution and it should reflect in the leadership and the Council of Ministers. As it had been the practice for so long, it should be established and under no circumstances, the leader and the majority of the Council of Ministers should come from the other House *i.e.* Rajya Sabha.

(vi) In a Parliamentary democracy the people were the repository of all sovereign powers and whoever represented he people directly should be the Prime Minister.

The Minister of State in the Ministry of Home Affairs while speaking on behalf of Government during the debate on the Bill, stated that "there can be no doubt in principle that the Prime Minister should be normally a member elected to Lok Sabha". He further stated that he had been authorised by the present Prime Minister to tell the House that she herself would have been willing to contest the election to Lok Sabha but for the reason that elections were not being held because of the emergency. He added that "while the spirit behind the Bill is acceptable, it would not be proper to have such a provision in the Constitution. There may be occasions—that too for a limited period—that a Prime Minister has to be from the other House".[25]

[25] *Ibid.*, 29-4-1966.

3

COMPARATIVE STUDY OF FINANCIAL PROCEDURE IN PARLIAMENT IN U.K. & INDIA

It is often said that financial procedure in Parliament is more or less the same in India as in the United Kingdom. That is broadly correct ; but when one delves deeper into the two systems, one comes across differences of detail. It is true that these differences do not alter the fundamental concept; nevertheless they do modify the systems in two different directions. The purpose of this article is to describe briefly the principles underlying financial procedure in the two countries, and then to examine some of the more important differences.

It is accepted in both countries that ultimately it is the responsibility of the chosen representatives of the people to grant supplies and to authorise the imposition of taxes. The House of Commons in the United Kingdom and the House of the People in India have complete power to consider estimates of expenditure and to assent, or refuse to assent, or to assent subject to a reduction, to such appropriations as they consider necessary. Each has power to sanction main, supplementary, excess, or exceptional grants. Each has power to make a grant in advance for a part of any financial year, or to make a grant for meeting an unexpected demand or for an undertaking for which, because of its magnitude or indefinite character, the demand cannot be stated in detail. It is the rule in both countries that Money Bills which deal with the imposition, repeal, remission, alteration or regulation of any tax, the raising or guarantee or repayment of loans or the imposition or variation or

This article was originally published in *Parliamentary Affairs* ; Vol. VI, Page 288.

repeal of charges on the Consolidated Fund or on money provided by Parliament, are always introduced in the Lower House. As a safeguard against any abuse of these powers, it is provided that if any question arises as to whether a Bill is or is not a Money Bill the decision of the Speaker shall be final. The Second Chamber (the House of Lords in the United Kingdom, the Council of States in India) has restricted powers in these matters. The Estimates as such are not discussed in the Upper Houses and Money Bills can only be delayed for a short period, fourteen days in India, one month in the United Kingdom. In both countries the Estimates of expenditure for a financial year are submitted in the form of separate votes for each Department of Government or service. The financial year is the same in both countries : 1st April to 31st March.

Points of Difference

(1) In the United Kingdom, the main Estimates for the forthcoming financial year are presented to the Committee of Supply about the end of February. Before the end of the financial year the House agrees to certain Votes for the Defence Services and to a Vote on Account for the other Departments. The Budget is opened by the Chancellor of the Exchequer in the Committee of Ways and Means, usually in April. After the Chancellor has made his statement, resolutions are moved to give effect to his proposals, and it has become customary for the Committee to pass all the resolutions except one on Budget Day. The Finance Bill is founded on the Committee's resolutions.

In India there are no Committees of the Whole House or of Supply or Ways and Means. The Budget is a statement of estimated receipts and expenditure of the Government. The "Demand for Grant" in India corresponds to the "Vote" in the United Kingdom. The Budget in India is presented to and considered by the House in two parts ; one pertaining to Railways, which are nationalised, and the other pertaining to Civil and Defence Departments and commercial organisations such as Posts and Telegraphs, All-India Radio, etc., which are owned, controlled, or managed by the Government. The same rules of procedure apply to both Budgets. The Railway Budget is presented to the House of the People by the Minister of Railways some time in the third week of February, and the General Budget by the Minister of Finance on the last day of

February. Both the Estimates of expenditure and the financial proposals for the following financial year are presented at the same time. Copies of the Budget papers, including the speeches of the Ministers in the House of the People, are laid on the Table of the Council of States. The Railway Budget is dealt with before the passing of the General Budget. Within a few days of the presentation of the Railway Budget, the House of the People and the Council of States discuss the Budget as a whole or any question of principle involved in it. No motions are moved, nor is the Budget submitted to the vote of either House. After the general discussion, the House of the People considers and passes the Demands for Grants pertaining to the Railway Budget. Usually the discussion on Demands lasts for three or four days. Then an Appropriation Bill covering the Railway Grants is introduced, considered, and passed by the House and afterwards transmitted to the Council for its recommendations.

The presentation of the General Budget to the House of the People is an important occasion and opportunity is often taken to make announcements of policy which have a bearing on the economic and financial position of the country. The Finance Minister gives figures of actual expenditure for the previous financial year and gives revised Estimates for the current financial year. On the conclusion of his speech, the Finance Minister introduces the Finance Bill immediately. The rules of the House provide that no discussion of the Budget shall take place on the day on which it is presented. Like the Railway Budget, the General Budget is discussed as a whole both by the House of the People and the Council of States. The Speaker of the House or the Chairman of the Council has power to appoint any day after the presentation of the Budget for its discussion, and to allot as many days as he thinks fit for this purpose ; in practice such arrangements are made in consultation with the Leader of the House At the end of the debate, the Minister of Finance has a general right of reply. In order that the maximum number of Members may take part in the discussion, the Speaker generally fixes a time limit, which does not exceed fifteen minutes, for each speaker : the Minister is generally given an hour to reply to the debate.

(2) As soon as the debate on the Address has been concluded, the House of Commons in the United Kingdom sets up two Committees—the Committee of Supply, which considers the grants

of money that will be required, and the Committee of Ways and Means, which authorises the issue of the sums required to meet the grants voted by the Committee of Supply. They are, in fact, Committees of the Whole House and whenever they are deliberating, the Speaker is moved out of the Chair.

The Indian system, as stated earlier, does not provide for the setting up of these Committees. The Budget is presented to, considered, and passed by the House as a whole, and the usual rules of debate apply.

(3) After the Ways and Means Committee in the U.K. has resolved that certain sums be granted to the Treasury out of the Consolidated Fund, the resolutions are reported to and agreed to by the House and form the foundation for a Consolidated Fund Bill. The Chancellor's Budget statement gives information as to the sums estimated to be required for Consolidated Fund Services (the Speaker's salary, Judges' salaries, the Civil List, the interest on the national debt, etc.) which are permanently charged on that Fund and do not have to be voted year by year, and it is only after that sum is known that the Committee can arrive at the total amount of expenditure for which they will have to provide the money.

When the Chancellor has revealed his taxation proposals, he concludes his speech by moving a number of resolutions. Any imposition of a new tax or increase in an existing tax requires a separate resolution. The debate on the last of the resolutions affords an opportunity for a general review of the financial condition of the country. When all the resolutions have been agreed to by the Committee, they are reported to the House and th Finance Bill is introduced. Every item in the Finance Bill must be covered by one or the other of the Ways and Means Resolutions. The Second Reading of the Finance Bill affords the House an opportunity for a general debate on the finances of the country; but thereafter debates on the Finance Bill, like those on any other Bill, are confined to its contents.

In India, as stated earlier, the Budget comprising both Estimates and the financial proposals is presented as a whole to the House. The Finance Bill, which covers all the financial proposals, is also introduced in the House at the same time. The Indian Provisional Collection of Taxes Act, 1931, authorises the collection of new taxes immediately. This Act provides that if the Finance Bill is not passed by Parliament within sixty days of the date of introduction

of the Bill, provisional collection will cease. It is, therefore, necessary that the Finance Bill be passed within sixty days, *i.e.*, before the end of April.

The Indian system does not provide for Money Resolutions. It is not, therefore, necessary to pass the Resolutions before a taxation measure can be embodied in the Finance Bill. There are also no Consolidated Fund Bills. All revenues authorised by law are credited to the Consolidated Fund, and money can be drawn out from the Consolidated Fund on the authority of Appropriation Acts. Expenditure charged on the Consolidated Fund is included in the Estimates every year, and though it is not submitted to the vote of the House, either House of Parliament is at liberty to discuss any of these Estimates.

(4) In the United Kingdom the Standing Orders lay down that twenty-six days in a year are allotted to the business of Supply. By law the whole financial business must be completed before the 5th August.

In India the number of days on which the business of Supply may be considered by the House is not laid down, but the Speaker is empowered to allot as many days as may be compatible with the public interest for a general discussion of the Budget, the Demands for Grants, and the Appropriation Bill. The Speaker in consultation with the Leader of the House, allots a number of days for each stage of the financial business, and on the last of the allotted days for each stage of business the Speaker is empowered to put all questions necessary to dispose of all the outstanding matters in connection with that stage. By convention the number of days which are allotted for the various stages of the two Budgets is as follows :—

		House of the People	Council of States
Railway Budget	General Discussion	3	2
	Demands for Grants	3	—
	Appropriation Bill A	few hrs.	I
General Budget	General Discussion	4	3
	Demands for Grants	15	—
	Appropriation Bill	I	I
	Finance Bill	4	I

(5) In the United Kingdom and in India, the form of Motion

for getting Supply is that an amount not exceeding £/Rs..... be granted to Her Majesty or the President, as the case may be, to defray the charges which would come for payment during the year ending 31st March in respect of services enumerated in the Votes or Demands for Grants. In the United Kingdom, two types of amendments may be moved to this motion—one to reduce the total vote by a specific sum, and in that case, after the amendment has been moved, the question is proposed from the Chair that a reduced sum not exceeding the original sum of £...less £...be granted; or an amendment may be considered in relation to a particular item in a vote, in which case the question proposed from the Chair is that item...be reduced by £...On the former amendment the debate is as wide as the original question, but on the latter the debate is strictly limited to the item to which reduction has been moved.

In India, amendments to the motion may be of three kinds and are technically called "cut motions". One is the *token cut*, the second is the *economy cut* and the third is the disapproval of *policy cut*. *A token cut* is usually, moved in the form "that the Demand be reduced by Rs. 100", and is intended to raise discussion on the policy underlying the Demand. When the cut is intended to be an *economy cut*, the amendment proposes a reduction of the grant or an item of the grant by a specific amount. This type of "cut motion" gives an opportunity to discuss concrete suggestions as to how the same service could be effectively organised at a reduced cost. The third kind of "cut motion" provides an opportunity for the discussion of alleged mismanagement or bad organisation and is in the form "that the whole Demand be reduced to Re. 1". No amendments to "cut motions" are permissible.

(6) In the U.K Supplementary Estimates resulting from unforeseen increases in expenditure are usually introduced in February or March, while those resulting from changes in policy are usually presented in July. Like the main Estimates, each one of these has to be passed separately. There is no provision for the use of the guillotine, but debate on a Supplementary Estimate is much more limited than on a Main Estimate. Only the details mentioned in the Estimates may be discussed and not the policy behind it, unless it is a new service or the grant asked for is of such a magnitude that questions of policy arise.

In Iinda, Supplementary Estimates may be brought before the House more than once in the course of a year. The principles of debate are the same as in the U.K., but the Speaker has power to allot time for discussing the Estimates. There is no general discussion on the Supplementary Estimates; they are taken up one by one and "cut motions" may be moved provided that they do not raise the policy behind the estimate (unless, as in the U.K , it is a new service or the supplementary grant is of such magnitude that the policy underlying the original grant has to be reviewed). If all the Supplementary Grants are not completed within the time allotted for them, there is provision for the use of the guillotine. The Supplementry Grants is immediately followed by an Appropriation Bill.

(7) When Votes on Account are under discussion in the Committee of Supply in the U.K., the field of debate extends to all the votes of a particular department or the connected activities of more than one department. Usually the official Opposition takes the initiative and puts down the subjects on which it desires to concentrate attention The subjects are selected in advance, and the Government is prepared for a discussion of its policy.

In India the discussion on Demands for Grants is taken up Ministry by Ministry. A period is allotted to each Ministry by the Speaker, in consultation with the Leader of the House The views of the Opposition are ascretained informally. All Ministries are put down for discussion once every year. Each Ministry circulates to Members a report on the working of that Ministry. The report emphasises the achievements of the Ministry during the year and its plans for the future. These reports are very popular with Members because they give the sort of information which is useful in discussing the Grant in question. This procedure saves the Minister from making an opening speech in the House, and more time is thus available for Private Members to discuss the Grant At the end of the Debate the Minister replies to the criticisms made during the discussion. Notices of "cut motions" are circulated to all Members and the Ministries in advance. All the "cut motions" which are moved are thrown open for discussion together and at the end the Minister usually replies to the points made in all the "cut motions".

(8) In the House of Commons the Finance Bill has to pass in the Commons like any other Bill. In India, after Supply has been voted by the house and the Appropriation Bill has been passed, the House

proceeds to consider the Finance Bill. First there is a wide discussion on the Bill, usually lasting two days. The Speaker man fix a time-limit for speeches. The motion before the House is that the Bill be referred to a Select Committee, which corresponds to a Standing Committee in the House of Commons. The Select Committee considers the Finance Bill in detail. Since this procedure was adopted several years ago, the Select Committee has on a number of occasions suggested changes in regard to taxes or duties, and the House has agreed to them. The report of the Select Committee is brought before the House and is discussed for two days, during which time the discussion falls into three parts : general discussion on the report of the Committee, clause by clause consideration of the Bill, and the third reading. At the end of the two days, the Speaker is empowered to put all questions necessary to dispose of all outstanding matters in the Bill.

(9) In the United Kingdom, the Provisional Collection of Taxes Act, 1913, authorises provisional collection of taxes for a period of four months from the date on which the tax resolutions take effect. It is thus necessary for the Finance Bill to receive the Royal Assent by 5th August. The Estimates are usually presented in February, and there is thus a period of five months during which the House can discuss both Supply and the Finance Bill. The House passes a Vote on Account and grants money to the Government pending the passing into law of the Appropriation Bill.

In India, the Provisional Collection of Taxes Act authorises provisional collection of taxes for a period of only sixty days from the date of information of the Finance Bill. The Finance Bill must therefore be passed in both Houses and be Assented to by the President before the end of April. Since the Estimates and the financial proposals are presented at the same time, Parliament gets a little less than two months to consider both the Estimates *and* the Finance Bill. As the discussion on Estimates is carried over into April, the House passes a Vote on Account granting money to the Government for a period of one or two months. Usually there is no discussion on the Vote on Account and the Estimates are taken up for immediate and detailed consideration. There is, however, nothing to prevent Members from raising discussion when the Vote on Account is taken up, although they are limited by the time available for the purpose and at the appointed hour the Speaker applies the guillotine.

(10) When the Appropriation Bill comes up for consideration in the House of Commons, subjects selected by the Opposition are usually put down for discussion.

In India the procedure is that the Members of Parties write in advance to the Speaker about the subjects which they wish to raise during the discussion on the Appropriation Bill. The Speaker exercises his discretion in withholding his consent to discussion on subjects which have already been covered by debates on Demands for Grants or which are minor or trivial. Discussion on the Appropriation Bill is thus limited to new points or events of public importance which may have occured between the passing of the Grant and the consideration of the Appropriation Bill.

(11) Both in the U.K. and in India there are Committees of the House known as the Estimates Committee and the Public Accounts Committee. Their terms of reference in both countries are the same. The Estimates Committee is empowered to examine such of the estimates as may seem fit to the Committee, to suggest the form in which the Estimates might be presented, and to report what economies consistent with the policy implied in the Estimates might be effected. The Public Accounts Committee examines the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the Committee may think fit. There are however certain points of procedure in which the United Kingdom and Indian Committees differ :—

(a) In India the Chairmen of the Committees are appointed by the Speaker from amongst the members of the Committee, whereas in the United Kingdom the Chairmen are elected by the Committees themselves. It is customary in the case of the U.K. Public Accounts Committee that the Chairman is a member of the Opposition and he is often one who has been Financial Secretary of the Treasury in a previous Government. There is no such convention so far as the Indian Public Accounts Committee is concerned.

(b) In the United Kingdom the Estimates Committee appoints various sub-Committees and divides the work among them. The witnesses are called and examined by the sub-Committees, which make their reports to the whole Committee. Neither the Committee nor a sub-Committee goes into questions of policy although it is not always easy to keep entirely clear a policy while examining details.

The Committee publishes its reports and the Department concerned submit observations to the Committee. The Committee usually begins its work in November and pending publication of the new Estimates in Feberuary, considers the Estimates for the current year. The minutes of the meetings of the Committee and sub-Committees are recorded and the report together with evidence and minutes of proceedings are presented to the House and printed. Later the Departmental replies, are also printed and presented to the House.

In India, the Committee appoints sub-Committees to study particular aspects of the subject under examination but evidence is always taken before the Committee as a whole. The Committee very often goes into questions of policy in order to undrstand the details of the Estimates better. The reports of the Committee are sent to the Departments in advance, but no comments or replies are invited from them. There is a convention that the Government will, as far as possible, implement the recommendations of the Committee. The Government places on the Table of the House from time to time statements showing progress made towards implementing the Committee's recommendations The evidence taken before the Committee is not printed, both because printing would involve heavy expenditure and also because non-publication encourages witnesses to speak more freely.

(c) The Indian Public Accounts Committee sits throughout the year and mostly during inter-session periods. Recently the Committee has appointed two *ad hoc* sub-committees to go into specified matters. The Public Accounts Committee, in the course of the examination of the Appropriation Accounts, also sometimes examines the policy behind expenditure and makes recommendations for better organisation and for deriving better value from the money spent. Since the war the evidence given before the Committee has not been printed but recently the Committee decided to restart printing of evidence. In other respects the procedure of the Public Accounts Committee is more or less the same as that followed by its counterpart in the United Kingdom except that the United Kingdom Committee observes more formality than the Indian Committee. When the U.K. Committee has witnesses before it, Members are not allowed to smoke, or drink anything except water. In India the Committee is more informal in these matters, and smoking and the drinking of tea or coffee is permitted.

This brief survey of different procedure shows how India is adopting her institutions to suit local conditions. Basically the aim is the same in both countries—to leave initiative for financial matters with the Executive Government and at the same time to give the Lower House of Parliament special responsibilities for checking and controlling the way that public money is raised and spent.

4

TWO ESTIMATES COMMITTEES

AMONG all the countries which follow the Commonwealth parliamentary system of procedure, the U.K.,* Canada and India[1] are the only countries which have the institution of Estimates Committee in their parliamentary system. In New Zealand, the Committee called the Public Accounts Committee is more akin to an Estimates Committee, since its main duty is to examine all estimates prior to their consideration by the Committee of Supply.

Although the main conception behind the establishment of an Estimates Committee in the U.K. and India is the same, *viz.*, that a *representative committee of parliament should examine the details* of estimates of expenditure of Government thoroughly from year to year in a selective way, the procedure and functions of the two committees differ in many respects. It is [the purpose of this article to show how each one of the two committees has taken a path of its own and is functioning.

In the U.K., a Select Committee on Estimates was first formed in 1912. The Committee was re-appointed in 1913 and 1914. The

Note.—This article is based on my first-hand knowledge of the working of the Estimates Committee in India and on the discussions which I had in London with the Clerk of the House and the Clerks of the financial Committees of the House of Commons and the written material supplied by them later.

*In the U.K., Estimates Committee has been replaced by the Committee or Expenditure with effect from January 22, 1971.

[1]In India, besides an Estimates Committee in the Lok Sabha, a majority of State Legislatures have formed Estimates Committees on the same model at the Centre.

outbreak of the war in 1914 brought to an end this short experiment and it was not till the end of July 1917 that a Select Committee on National Expenditure was formed from year to year. In 1921, the Select Committee on National Expenditure was not re-appointed and a Select Committee on Estimates was revived in its place. The Committee was re-appointed every year from 1921 till the outbreak of the last war. During the war years, 1939—45, a Select Committee on National Expenditure was appointed every year. In 1946, a Select Committee on Estimates was again appointed.

If one delves deeper, one finds it interesting to note that *ad hoc* committees, more or less the early counterparts of the Estimates Committee, have been in existence[2] since 1828. In 1828, a Select Committee was appointed to consider what further regulations and checks should be adopted for establishing an effective control upon all charges incurred in the safe custody and application of public money and this Committee was required to consider measures for reducing public expenditure. In 1848, three Select Committees were appointed to consider various classes of estimates. These Committees were appointed from year to year and in war periods, *e.g.*, during the Crimean War and Boer War, other committees to enquire into the condition of departments supplying the War Office contracts, etc., were formed. During the Boer War, also a Select Committee on National Expenditure was appointed in 1902 and re-appointed in 1903.

In India, following a memorandum[3] by Shri M. N. Kaul, then Secretary of the Constituent Assembly of India (Legislative), which was strongly commended for adoption by the then Speaker, Shri G. V. Mavalankar, the Estimates Committee was set up for the first time in 1950, after the present Constitution came into force. The Committee has been set up every year since then. There had been, however, a demand for the establishment of a committee like the Estimates Committee since 1938. The non-official members of the then Central Assembly had regularly voiced a demand for a com-

[2]A complete review tracing the origin and development of the Estimates Committee in the U.K. through the centuries is contained in the Eleventh Report of the Committee on National Expenditure for the session 1943-44.

[3]*See* the memorandum by Shri M.N. Kaul, Secretary, Constituent Assembly of India (Legislative), on the Reform of Parliamentary Procedure in India and the Notes thereon by Shri G.V. Mavalankar, Speaker, Constituent Assembly of India (Legislative). (Published by the Lok Sabha Secretariat).

mittee with sufficient powers to examine the expenditure of the Government ; but the Government of the day always shelved the proposal on one pretext or another.[4]

In the U.K., the Committee on Estimates is a sessional committee[5] appointed on a Government motion from session to session. The motion contains the terms of reference of the Committee and also the names of members to be appointed to the Committee. Unlike the Public Accounts Committee, there is no mention of it in the Standing Orders of the House of Commons.

In India, the Estimates Committee is a standing committee whose scope of functions, method of appointment and other ancillary matters are provided in the Rules of Procedure and Conduct of Business in Lok Sabha.[6] The Motion for the election of the Committee for the following year is moved in the Lok Sabha by the Chairman of the Committee sometime (usually a fortnight) before the term of the current Committee comes to an end. The rules provide for election of members to the Committee by a system of proportional representation by single transferable vote. At the commencement of a new House, the first motion is made by a Minister of Government.

In the U.K., the number of members of the Committee is 36 and the quorum to constitute a meeting of the Committee is fixed at

[4]On the 25th August, 1937, in reply to a Question in the Central Legislative Assembly, the then Finance Member said that he did not propose to set up an Estimates Committee.
On the 8th April, 1938, during the discussion on a motion regarding the appointment of a retrenchment committee, in the Central Legislative Assembly, the then Finance Member showed his willingness to appoint instead an Estimates Committee provided a Government official was appointed its Secretary and the subjects to be examined by the Committee were selected by the Finance Department of the Government. The House rejected the proposal because they did not like the Committee to work in an official atmosphere".
On the 14th March, 1944, during the debate on a cut motion in the Central Legislative Assembly, the then Finance Member agreed in principle to the appointment of an Estimates Committee, but said that he could not agree to its functioning immediately.
See L.A. Debates 1937 Vol. IV pp. 506-7 ; 1938, Vol. III, pp. 2865—7 and 1944, Vol. II. p. 1072).

[5]*See May's Parliamentary Practice* (Sixteenth Edition pp. 680-1.

[6]*See* Rules 310-312 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition).

seven. The Indian Committee consists of 30 members and the quorum is one-third of the number of members.

In the U.K., the Chairman of the Committee is elected by the members of the Committee after it has been constituted. In India, the Chairman is nominated by the Speaker provided that if the Deputy Speaker is a member of the Committee, he becomes the Chairman of the Committee automatically. No member, who is a Minister (which includes a Deputy Minister and a Parliamentary Secretary), can be appointed a member of the Committee and if a member after appointment to the Committee is appointed a Minister, he ceases to be a member of the Committee.[7] In the U.K., there is no such rule: but by convention, Ministers are not appointed members of the Committee and similarly, if a member of the Committee is appointed a Minister of Government, another member would normally be appointed to the Committee in his place.[8]

In India, the functions of the Committee are laid down in the Rules of Procedure and Directions by the Speaker issued from time to time, while in the U.K., the main terms of the Committee are stated in the motion and their amplitude and scope have been determined by conventions and practices from time to time. One of the interesting matters which has engaged the attention of the critics of the Indian Committee is that its terms of reference and their interpretation go possibly a little beyond its counterpart in the U.K. so far as questions of policy are concerned. There is no doubt that in the case of the Indian Committee, the functions have been set out in the Rules of Procedure and the Directions issued by the Speaker, while in the case of the U.K. Committee one has to infer them mostly from the reports of the Committee and also from the descriptions of the various authors who have described the work and functions of the Committee in the U.K.

The functions of the Indian Committee are laid down as below :—

(a) to report what economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates, may be effected;

[7]*See* Proviso to Rule 311(1) of the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition).

[8]No formal provision exists for the resignation of a member from the Committee.

(b) to suggest alternative policies in order to bring about efficiency and economy in administration;

(c) to examine whether the money is well laid out within the limits of the policy implied in the estimates; and

(d) to suggest the form in which the estimates shall be presented to Parliament.

The Speaker, by a direction, has defined the amplitude of the term 'policy' referred to in clause (a) above. The direction states that "the term 'policy' relates only to policies laid down by Parliament[9] either by means of statutes or by specific resolutions passed by it from time to time".

The Direction further provides that—

"It shall be open to the Committee to examine any matter which may have been settled as a matter of policy by the Government in the discharge of its executive functions."[10]

[9]Shri C D Deshmukh, the then Finance Minister, said in the course of his speech on the 23rd May, 1952, in Lok Sabha :—

"I look forward to continuing assistance from the labours of the Estimates Committee in securing that, within the four corners of the *policy laid down by Parliament*, the moneys authorised to be spent by it are utilized to the best possible advantage without avoidable waste"

[10]In 1958 a question was raised in Government circles and it was widely discussed in the press that the Estimates Committee had criticised policy matters and attention was in particular drawn to para 21 of the Twenty-First Report of the Estimates Committee on the Planning Commission In this para the Committee had *inter alia* stated as follows :

"... while the Prime Minister's formal association was absolutely necessary during the formative stages and while he would still have to provide the guidance and assistance to the Planning Commission so as to facilitate the success of planning, it is a matter for consideration whether it is still necessary for him to retain a formal connection with the Planning Commission Similarly, it would also have to be considered whether it is necessary to continue the formal association of the Finance Minister and other Ministers of the Central Government with the Commission "

It is not correct to say that the Committee has criticised a policy laid down by Parliament There has never been any formal parliamentary approval of the composition of the Planning Commission The first announcement regarding the constitution of the Planning Commission was made in the President's Address to Parliament on the 31st January, 1950 Later during his Budget speech the then Finance Minister, Dr John Matthai, made an announcement about the personnel of the Commission

It is interesting to note that Dr John Matthai stated that Shri Jawaharlal Nehru, and not the Prime Minister, would be the Chairman of the Commis-

With regard to clause (b) "the Committee shall not go against the policy approved by Parliament; but where it is established on evidence that a particular policy is not leading to the expected or desired results or is leading to waste, it is the duty of the Committee to bring to the notice of the House that a change in policy is called for."[11]

"The fundamental objectives of the Committee are economy, efficiency in administration and ensuring that money is well laid out; but, if on close examination, it is revealed that large sums are going to waste because a certain policy is followed, the Committee may point out the defects and give reasons for the change in the policy for the consideration of the House."[12]

In the U.K., as stated above, the motion[13] which is brought

sion. None of the other members who were appointed to the Commission was a Minister of the then Government of India. It is thus clear that the intention was to constitute the Commission purely with non-officials and Prime Minister's association was in his individual capacity and not as the Prime Minister. No resolution nor a Bill was brought before Parliament to define the strength of the Commission, the qualifications for membership, the proportion between Minister and non-Minister members or the functions of the Commission. They were all settled by a Government Resolution dated the 15th March, 1950.

The strength of the Commission was changed from time to time and all these changes were made by Government in its executive discretion and were never placed before Parliament for their approval. Therefore, there can be no policy approved by Parliament in so far as this matter is concerned. It can at best be a policy settled by executive Government in the discharge of its executive functions to conduct the economic planning of the country. It is relevant to point out here that in the U.K. such a body would have been constituted by an Act of Parliament, *vide* for instance The Atomic Energy Authority Act.

[11]Direction No. 98(3) issued by the Speaker.

[12]Speaker, Shri M. A. Ayyangar, inaugurating the Estimates Committee in May 1959 said as follows :—

"Your function is not to lay down any policy. Whatever policy is laid down by Parliament, your business is to see that that policy is carried out—not independently or divorced from its financial implications. — You must bear in mind constantly that you are a financial committee and you are concerned with all matters in which finances are involved. It is only where a policy involves expenditure and while going into the expenditure you find that the policy has not worked properly, you are entitled and competent to go into it. Where the policy is leading to waste, you are entitled to comment on it in a suitable way".

[13]House of Commons Deb., 1956-57; Vol. 561 Cols. 1645-6,

before the House every session for the appointment of the Committee states the terms of the Committee in the following words :

ESTIMATES

That a Select Committee be appointed to examine such of the estimates presented to this House as may seem fit to the Committee and to report what, if any, economies consistent with the policy implied in those estimates may be effected therein, and to suggest the form in which the estimates shall be presented for examination.

Earlier writers who have written on the Estimates Committee in the U.K. have, broadly speaking, stated that the Committee avoids all questions of policy. None of the writers has, however, made it clear in a detailed manner as to what is intended by them by the term 'policy'. Clearly a Committee of Parliament can only be bound by the policy laid down by Parliament. It cannot be limited in its work by the policy that Government may have laid down in the discharge of its executive functions subordinate to the policies laid down by Parliament. It is also to be noted that much of the procedure in the House of Commons is regulated by conventions and the written rules are considerably supplemented by unwritten practices. It takes a long time for the conventions and practices to find their way into the text-books. However, Professor K.C. Wheare, a distinguished writer on constitutional matters, writing in 1955 described the position in the U.K. in the following terms.[14]

"It is not possible to argue in detail here the case for and against allowing or encouraging the committees to consider policy or merits. It may be asserted, however, that much of the usefulness and reputation of the Public Accounts Committee, which is regarded as the model of the scrutinizing committees of the House of Commons, comes from its interest in questions of wastefulness, which certainly trespass upon questions of policy. It is certain, too, that a great part of the usefulness of the Estimates Committee comes from its freedom in interpreting its terms of reference. There has been too much theoretical dogmatism about the proper functioning of these committees. Policy does not necessarily mean party policy, nor high policy. There are many questions of policy which members of a select com-

[14] *Government by Committee* by K.C. Wheare (P. 238).

mittee, of differing parties, could investigate without dividing themselves into Government supporters and Opposition supporters. The experience of the National Expenditure Committee and the Estimates Committee has demonstrated that already. It is wise, no doubt, not to widen the terms of reference of the committees by empowering them in express terms to consider policy. It is much better that these discussions of policy should arise necessarily from discussions of economy and value for money and effiiciency, rather than that they should be raised directly."

The author further says :[15]

".....some part of the interest which the Estimates Committee has aroused since 1945 is due to the fact that, in spite of the limitations in its terms of reference, it does in fact encroach, from time to time, upo then field of 'policy'. It is difficult, of course, to know where policy begins. It has long been accepted that the Public Accounts Committee is entitled to scrutinize expenditure not only from the strict point of view of audit but also from the point of view of waste and extravagance. Does not that lead them into questions of policy ? It must be admitted that it can. Even more likely is it that the Estimates Committee in considering proposals for expenditure is likely to be led into judgements upon waste and extravagance, which are bound to lead to judgements upon the wisdom of the policy which led to this expenditure."

Also Sir Gilbert Campion (later Lord Campion), Editor of May's *Parliamentry Practice* for many years, summed up the position before the Select Committee on Procedure (1945-46) as follows :[16]

"Committees of the House of Commons on administrative matters are, in fact, advisory bodies used by the House for inquiry and to obtain information, and they generally inquire into definite happenings and criticise after the event, though as a result of the lessons they have learnt they may make suggestions for the future. It is difficult to see how such bodies could impair ministerial responsibility, even if matters of 'policy'—a very indefinite word—were assigned to them. If the House is not free to use them as it wishes, it is deprived, or deprives itself, of the most natural means of obtaining information and advice."

[15]*Government by Committee* by K.C. Wheare (P 237).
[16]H.C. 189-I (1945-46) ; p. 224.

The above statements are amply borne out if a detailed study of the reports of the Estimates Committee in the U.K. is made. A statement prepared at random showing some of the recommendations, which touch upon policy matters, made by the Estimates Committee of the House of Commons is given in an Annexure.

In the U.K., the Estimates Committee normally works through its Sub-Committees. A number of Sub-Committees—usually five or six—are appointed and the subjects which the Committee has taken up for consideration during the year are divided among the Sub-Committees by a Steering Sub-Committee (Sub-Committee 'A') which also considers the procedural and other matters relating to the working of the Committee. The Sub-Committees take evidence and formulate their reports which are then considered by the whole Committee.

In India, so far, the Sub-Committee system has been adopted only in one case, *viz.*, consideration of the estimates relating to the Ministry of Defence. In that case, the Sub-Committee was authorised to take evidence and formulate its report which was then considered by the whole Committee. Otherwise, the Estimates Committee itself considers all the matters which it has taken up for consideration during the year. The Committee usually appoints Study Groups and divides the subjects among the Study Groups. The Study Groups make an intensive study of the subjects which have been allotted to them and the members of the Committee may generally acquaint themselves with all subjects before the Committee. The Committee as a whole takes evidence and then comes to conclusions. It may then entrust the work of formulating the first draft of a report to the Study Group. The draft of the Study Group report is submitted to the Chairman of the Committee who may accept it or make such further changes in it as he may like. The draft report is circulated to the members of the whole Committee as the Chairman's report and it is then considered in detail by the whole Committee.

In the U.K., there is a separate Select Committee on Naitonalised Industries[17] which has its own terms of reference. It is quite distinct

[17]There are only eight such Nationalised Industries. The terms of reference of the Select Committee on Nationalised Industries are as follows :—
"That a Select Committee be appointed to examine the reports and accounts of the Nationalised Industries established by statute whose controlling Boards are appointed by Ministers of the Crown and whose annual receipts are not wholly

from the Select Committee on Estimates since no estimates for these industries are laid before Parliament. The sphere of work of the Select Committee on Nationalised Industries is more comparable with (and indeed intentionally to some extent overlaps) that of the Committee on Public Accounts.

In India, up to April, 1964, the functions of examining all the Public Undertakings[15] which include nationalised industries were discharged by the Estimates Committee itself. In the beginning the Committee as a whole selected subjects for examination and dealt with them in the same manner as the estimates of any other department or Ministry. Subsequently, the Speaker issued a direction constituting a Standing Sub-Committee of the Estimates Committee on the Public Undertakings. This Sub-Committee took evidence, formulated its report which would then be considered by the whole Committee. In effect, the Sub-Committee on Public Undertakings worked as an independent entity excepting that the selection of subjects to be considered by the Sub-Committee was made by the whole Committee and the draft report of the Sub-Committee was considered by the whole Committee. The members of the Sub-Committee were selected by the Chairman of the Committee from amongst members of the Estimates Committee and the Sub-Committee worked under the guidance and the directions of the Chairman of the Estimates Committee. This Committee worked on the same model as the Sub-Committee on Defence.

In may, 1964, the Committee on Public Undertakings was constituted and now the Estimates Committee examines such Public Undertakings as have not been allotted to the other Committee.

Both in the U.K. and India, work of the Estimates Committee begins after the estimates of expenditure have been presented to the House. But in the U.K., the Estimates Committee frequently reports before the final vote on the estimates takes place, so that the House

or mainly derived from moneys provided by Parliament of advanced from the Exchequer."

[15]A public undertaking for the purposes of examination by the Estimates Committee has been defined in direction of the Speaker as follows :—

".....a public undertaking means an organisation endowed with a legal personality and set up by or under the provision of a statute for undertaking on behalf of the Government of India an enterprise of industrial, commercial or financial nature or a special service in the public interest and possessing a large measure of administrative and financial autonomy."

may be in possession of the views of the Estimates Committee before it has finally accepted the proposals of the Government in relation to those matters which the Estimates Committee has taken up for consideration during the year. This is possible because the estimates are voted nearly 5 or 6 months after these have been presented to Parliament.[19] It may, however, be pointed out that the consideration of estimates in the Committee of Supply is in no way contingent upon their previous consideration by the Estimates Committee.

In India, the reports of the Estimates Committee are submitted throughout the year irrespective of the fact that the House had voted the estimates. This is so because the estimates are presented to the House on the last day of February and they are passed before the end of April. In practice, the Estimates Committee has found it difficult to complete its work within the two months at its disposal. Legally and constitutionally, the reports of the Estimates Committee are not binding on the House or the Government. They are recommendations which the Government may accept or may feel bound not to accept because of various difficulties. Since the estimates are voted by Parliament in the shape of authorisations not exceeding certain upper limits, it is always open to Government to spend less and to accept the recommendations of the Estimates Committee and effect economy. In any case the views of the Estimates Committee would have been reflected in the next year's estimates and the House can always draw attention to the previous reports and call for explanations from the Minister concerned as to why the estimates have not been prepared after taking into account the recommendations of the Estimates Committee. In practice, therefore, there is sufficient time for the Estimates Committee to investigate thoroughly into the matters and make considered recommendations and for Government to examine the recommendations of the Committee with care and for the House to give its considered opinion after taking into account the views of the Committee and Government.

In India, it is open to the Committee to call for details in respect of expenditure charged on the Consolidated Fund of India. The Speaker has also directed the Committee to scrutinise whether the classification of estimates between 'Voted' and 'Charged' has

[19]The Estimates are presented sometime in February and they are finally voted in July or August.

been done strictly in accordance with the provisions of the Constitution and Acts of Parliament.

In the U.K., the Estimates Committee does not undertake any tours or study on the spot of the organisations which they are examining for the time being. Sub-Committees are, however, given power to adjourn from place to place and have on occasions even travelled overseas (*e.g.*, to Nigéria). The Sub-Committees would not normally visit the central offices of Ministries, but frequently visit out-stations.[20] In India, the Study Groups or the Sub Committee or the whole Committee make frequent visits throughout the year to the central or out-station offices of the various organisations, departments or Ministries which are under examination by them. They obtain a visual impression of the organisation as well as information from the officers on the spot. This is of course done informally and only with a view to make a thorough study of the Subject. The formal evidence is taken and formal discussions take place later in the Committee room in Parliament House at which the information obtained as a result of the Study Tour is exchanged with top officials of the organisation and their considered views obtained. The report of the Committee is based mainly on the formal evidence and formal discussions that have taken place in the Committee room. When Committees are on a Study tour, informal meetings may be held at the place of visit but at such meettings no decisions are taken or minutes recorded.

In the U.K., the sub-Committees frequently call non-officials to give evidence, if, in their opinion, the advice of a non-official is germane to the inquiry. In India, too, non-officials may be invited to appear before the Committee to give evidence on any matter before the Committee.[21]

In the U.K., the meetings of the Committee or Sub-Committee are generally held during sessions of the House, although by an

[20]Sub-Committee 'B' visited three Research establishments of the Department of Scientific and Industrial Research and the premises of the British Coal Utilisation Research Association and of the Printing, Packaging and Allied Trades Research Association. (Fifth Report 1957-58) from the Select Committee on Estimates on the Department of Scientific & Industrial Research).

[21]Since 1953-54. the Estimates Committee has called many non-official witnesses to give evidence. In 1958-59 alone about 15 such witnesses were called. They included retired Government servants, representatives of private industry, experts, outstanding public men and M.Ps.

authorisation from the House the Committee can meet during recess. The Committee or Sub-Committee generally meets for about 2 hours at a time. In India, on the other hand, the Committee, the Study Groups and the Sub-Committees meet throughout the year, whether the House is in session or not. There is no obligation on the part of the Committee to seek any authorisation from the House. The duration of the sittings of Committees varies from 3 to 6 hours a day.

In the U.K., the report is from the Committe to the House and the mode of address is "Your Committee". The report is not signed by the members of the Committee because the report contains conclusions of the majority of the members and the proceedings of the Committee show how the members voted and what their differences were. In India, the report is signed by the Chairman and is presented by him on behalf of the Committee. The mode of presentation of report is "I, the Chairman, having been authorised by the Committee to submit this report on their behalf, present the report". The proceedings of the Committee indicate the manner in which the report was considered and the names and the number of members who were present when the report was approved. So far, the Committee has obtained unanimity on the conclusions which it has embodied in its reports. In one case only with regard to a particular matter in a report a member wished that his alternative view should be recorded in the minutes of the sitting of the Committee which was done. Sometimes, the Committee[22] itself may indicate in the report that there was another view in the Committee which was not accepted or there was a majority view for a particular matter without indicating who were in the minority or majority. The Committee does not work on party lines and therefore there is a spirit of compromise and give and take and the matters are not pressed to division and no votes are recorded.

Both in India and the U.K., there are no minutes of dissent to the reports. In the U.K., the proceedings of the Committee indicate whether more than one draft report was presented and if so, which one was taken up for consideration. The evidence given before the Committee is presented to the House along with the report although the Committee is not obliged to report *all* the evidence taken before it. The report also gives indications as to the part of

[22]Such a procedure is prohibited under the U.K. practice.

the evidence on which the particular observations or recommendations contained in the report are based. The minutes are thus written very briefly and give no indication about the gist of evidence or trend of discussions in the Committee. In India, on the other hand, the evidence is not presented to the House nor is it printed or made available to anybody. It forms part of the record of the Committee. Consequently, minutes are written elaborately and they indicate the gist of the discussions that took place in the Committee. Such minutes are impersonal and they may only indicate the salient features of a particular point of view or an observation. These minutes are presented to the House along with the report or a little later. There has been some discussion about the merits and demerits of presenting verbatim evidence given before the Committee to the House and thus making it available to the Government and the public. The advantages are of course obvious inasmuch as it will give a complete background to the readers of the reports of the Estimates Committee as to the trend of discussion in the Committee and the volume and strength of opinion and the level at which it was expressed before the Committee. But those who advocate that the evidence should not be divulged argue that the officials of the Government and others who appear before the Committee should speak freely and frankly give their opinions and observations on the various matters before the Committee. If it were known that the evidence would be made public or made available to their superiors the officials might perhaps refrain from expressing their candid opinions and may only give formal replies which may prevent the Committee from coming to correct conclusions. Secondly, the evidence is so voluminous that it may be very costly to get it printed and circulated. Furthermore, most of the evidence given by the officials is based on voluminous written material so that the evidence by itself may not be quite fully explanatory unless the other documents are also printed along with it and this may raise questions of editing and also questions of infringing the secrecy of documents.

In India, after the report is finalised by the Committee, it is sent to the Ministry or Department concerned for verification of facts contained therein. A copy is also sent to the concerned Financial Adviser for similar purpose. The idea is that the factual statements made in the report should be correct in all respect so that there is no dispute between the Committee and the Department as to

the facts later on. The Ministries while communicating corrections of facts sometimes do give their comments on the recommendations contained in the report. The Committee may also consider the comments of the Ministry and if any new facts have been brought to their attention even at that stage the Committee may review its recommendations and amend or modify its earlier conclusions. The occasions on which the Committee has reconsidered its recommendations in the draft report have been very few ; firstly, because the Ministries did not give their comments on proposed recommendations and secondly, only in very few cases any new facts were brought to the attention of the Committee to necessitate revision of its earlier conclusions. The Ministries are enjoined by a letter every time that the draft report should be kept secret before it is presented to the House. This direction of the Committee has always been followed by the Ministries and Departments.

In the U. K., the draft report is not sent to the Ministry for verification. The Committee finalises its report on the basis of the evidence given before it and the draft report is not shown to anybody before it is presented to the House. After the report is presented to the House, the Ministries are at liberty to give their minutes or comments on the reports and present them to the House. In some cases it has happened that Government has disputed the facts contained in the report of the Estimates Committee.[23]

In India, the recommendations of the Estimates Committee are since 1958, classified at the end of each report in an Appendix under the following heads :

(a) Recommendations for improving the organisation and working of the Department.

(b) Recommendations for effecting economy—an analysis of more important recommendations directed towards economy is also given. Where possible, money value is also computed.

[23] *See* White Paper on the report on Foreign Office. The Estimates Committee presented to the House of Commons on the 10th December- 1954, its Seventh Report on the Foreign Service. On the 13th December, 1954, in answer to a question the Foreign Secretary referred to certain errors in the report. The Government subsequently presented a White Paper.
(H.C. Debates Vol. 536, Cols. 682-3 and Appendix I of the Second Special Report of the Estimates Committee 1954-55).

(c) Miscellaneous or General recommendations.

It is however to be noted that the Committee does not proceed to analyse the figures comprising the estimates with a view to seeking justification for each sum included in the estimates just as a Budget Officer of the Government will do. Since the figures represent the activities of the Ministry or Department and the Committee is interested in examining those activities it scrutinizes them from the following points of view :

(a) whether most modern and economical methods have been employed ;

(b) whether persons of requisite calibre on proper wages with necessary amenities and in right numbers have been put on the job;

(c) whether duplication, delays and defective contracts have been avoided ;

(d) whether right consultation has preceded the execution of the job; and

(e) whether the production is worth the money spent on it.

In the U. K., the reports do not contain any classification of recommendations. In other respects the examination of the Estimates is conducted on the same lines as in India.

In India, no member of the Estimates Committee can be a member of a Committee appointed by Government for examination of a matter which is concurrently under the examination of the Estimates Committee, unless he has taken the permission of the Speaker before accepting nomination on the Government Committee. The Speaker, after consultation with the Chairman of the Committee, may either allow a member to be a member or Chairman of a Government Committee or advise him to decline[24] the offer. The member may if he is keen on accepting nomination on the Government Committee resign[25] from the Estimates Committee. Where,

[24]There is no such case so far.

[25](a) Shri Mahavir Tyagi, Member, Estimates Committee resigned from the Committee on his appointment as Chairman of Government Committee regarding Direct Taxes Administration Enquiry (1958). The Estimates Committee had decided earlier to take up the examination of the Income-Tax Department.

(b) Shrimati, Renuka Ray, Member, Estimates Committee (1958-59), resigned from the Committee on her appointment as a member of the Study Team on Social Welfare.

however, the Speaker has permitted a member of the Estimates Committee to be a member[26] or Chairman of a Government Committee on the same subject which the Estimates Committee had been examining then, he has always stipulated that the report of the Government Committee should be made available to the Estimates Committee and it should not be released for publication without the permission of the Estimates Committee or before the Estimates Committee has presented its own report on the same matter.[27]

In the U.K., there are no such restrictions on the appointment of members of the Estimates Committee to the Committees appointed by Government for investigation of the same subject which is under the examination of the Estimates Committee.

Both in India and the U.K., the Committee has full powers to send for papers, persons, and records and the Government have the discretion to decline production of any paper if, in their opinion, its disclosure is prejudicial to the safety or interest of the State. In India, however, there is a further proviso that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final. Occasionally also Government have pleaded that, certain information being of a secret nature, papers and records relevant thereto might not be produced before the Committee. The Committee has insisted that unless Government certify that the disclosure of any paper is prejudicial to the safety or interest of the State all papers of confidential or secret nature should be produced before the Committee. In recent years, a convention has been established that if a witness says that a particular paper is secret, he may show it to the Chairman and if the Chairman is satisfied it would not be produced before the Committee and the Chairman may explain the position to the Committee. But if he directs that the paper should be produced before the Committee, the Government may either do so or refer the matter to the Speaker for his

[26] In cases where the Estimates Committee was not considering the same subject, the stipulation that the report of the Government Committee should be made available to the Estimates Committee was not made.

[27] (a) Zaidi Committee report on Land Reclamation Project, 1953.
(b) Rau Committee on Damodar Valley Corporation, 1954.
(c) Enquiry Committee on Banaras Hindu University, 1957-58.
(d) Direct Taxes Administration Enquiry Committee, (1958).

guidance. So far the question of production of secret papers has arisen only in a few cases and the matter has been settled to the satisfaction of the Committee and the Government by discussion and no case has come up to the Speaker. In the U.K. the Speaker has no such powers in the matter and all such questions are disposed of by the Committee itself. If the Committee should feel that a paper which has been withheld form the Committee should be produced before it, the only course left open to it is to refer the matter to the House for its decision.

In India, after the report has been presented to the House, the Ministry or the Department concerned is to take action on the various recommendations and conclusions contained in the report which are summarised at the end of the report and consecutively numbered. After a lapse of some reasonable time, the Ministry or Department concerned is required to intimate to the Committee the nature of action taken on the recommendations and suggestions. The replies received from the Ministries and Departments concerned are analysed by the Committee in four Statements :

(i) Statement I shows the recommendations and suggestions, etc., agreed to by the Government and implemented.

(ii) Statement II shows the recommendations, which it has not been possible for the Ministry or Department to implement for reason stated by them and which the Committee on reconsideration thinks should not be pressed.

(iii) Statement II shows the recommendations which the Government are unable to accept for the reasons given by them but which the Committee feels should be implemented.

(iv) Statement IV shows the recommendations to which final replies of Government have not been received.

These four Statements are presented to the House in the form of a further report from the Committee and then it is left to the House to take such further action as it may like.

In India, the action taken by Government on the reports is sifted, analysed and considered by a Standing Sub-Committee of the Estimates Committee which is appointed at the beginning of each year. The Sub-Committee goes into every recommendation thoroughly and may sometimes call the departmental witnesses to amplify the written statement supplied by the Department. The report of the Sub-Committee is then placed before the whole

Committee and it is only after the Committee has deliberated on it and approved it, that the final report is presented to the House. Sometimes this process of watching the implementation of recommendations is spread over many years[28] and the successive Committees consider them. This method has proved effective because the Ministers are answerable to the Committee for every recommendation and different Committees have had an opportunity of examining the same matter at different periods so that the soundness of the recommendation made by the Committee is open to test subsequently by different persons at different periods. So far, there have been no cases when there has been a conflict between the views of successive Committees. The Committee may, through lapse of time and in the changed circumstances, agree not to press a recommendation ; but there has been no case where the Committee has fundamentally disagreed with its predecessors on the merit or value of any recommendation.

In the U.K., there is no regular machinery whereby the implementation of recommendations is watched. Each Member is left to spell out the Government's attitude to a recommendation of the Committee either from the memoranda written by the Government departments or from the white papers placed before the House of Commons or from answers to Parliamentary questions or Government statements made in debate or otherwise from time to time.

In India, the House does not discuss the report of the Estimates Committee as such ; but during the discussion on the budget and the demands for grants copious references are made to the reports of the Estimates Committee by members of the Opposition as well as Government Party and the Minister concerned is required to answer most of the criticisms made in the reports of the Estimates Committee indirectly in such debates. Reports of the Estimates Committee are also referred to during question time when members seek information on the implementation of recommendations.

[28]The Committee is conscious of the fact that it should not prolong a matter unnecessarily so that it may not have to deal with a large accumulation of arrears as years roll on. The delays are at present due to the slackness on the part of Government Departments in furnishing replies. Such belated views of the Government sometimes throw the recommendations of the Committee out of focus and it is waste of time and energy to pursue such recommendations. In such cases the Committee would do well to close the matter by making a report to the House on the delays in receiving replies and leave the matter to be settled by the House in such manner as it deems fit.

In the U. K., the Estimates Committee ceases to have any concern with the reports, after they have been presented to the House. The same Committee or the successor Committee is not required to report the progress of the implementation of recommendations. After the presentation of a report the Ministry or Department concerned usually send its reply to the Committee which then publishes it as a separate report. In such reports the Committee frequently comments on the departmental observations and calls for a further reply after taking evidence on the reply itself from departmental witnesses. Members do refer on Supply days to the reports of the Estimates Committee and ask the Minister what he has done in regard to the implementation of its recommendations. In recent years there have been a few instances[29] where the reports of the Estimates Committee have been discussed by the House on a specific motion.

In India, the Rules of Procedure of the House provide that the Speaker may from time to time issue directions to the Chairman of the Committee as he may consider necessary for regulating its procedure and organisation of work.. Also, the Chairman may if he thinks fit refer any point of procedure to the Speaker for his decision. In pursuance of this power, the Speaker has issued a number of directions from time to time regulating the procedure of the Committee. These directions have been issued by the Speaker after considering concrete cases that have been brought to his notice by the Chairman or the Committee. By the rules and directions the Committee or the Chairman of the Committee is bound to refer certain matters of procedure to the Speaker for his decision or guidance, in case any need arises. This is done to avoid references to the House. The Committee by convention shows its draft reports to the Speaker before they are presented to the House. However, the Speaker has merely perused these reports and has never referred any matter to the Committee for reconsideration, amplification or elucidation.

In the U.K., as stated earlier, the Speaker is not concerned with the day to day functioning of the Committee and therefore no

[29] 23rd July, 1951—Debate on the Third Report (on Rearmament).
1st July, 1953—Debate on the Eighth Report (on School Buildings).
20th Feb., 1959—Debate on the First Report (on the Police in England and Wales).

power is vested in him to give directions to the Committee. The Committee also does not inform him privately of the progress of the matters under consideration by the Committee. He is not officially cognizant of any matter until the Committee makes a report to the House.

In India, sometimes specific matters[30] have been referred by the Speaker or the House to the Committee for investigation and report. In the U.K., there is no such practice unless the matter pertains to the internal functioning of the Committees, *e.g.*, on the 27th June, 1951, a complaint that written evidence submitted to a sub-committee of the Estimates Committee had been prematurely published was referred to the Estimates Committee for investigation and the Committee reported thereon.

In India, the Speaker may on a request being made to him and when the House is not in session[31] order the printing, publication or circulation of the report of the Committee before it is presented to the House. In that case, the report shall be presented to the House during its next sesion at the first convenient opportnnity. Any business pending before the Committee does not lapse by reason only of the prorogation of the House and the Committee continues to function notwithstanding its prorogation. A Committee which is unable to complete its work before the expiration of its term or before the dissolution of the House may report to the House that the Committee has not been able to complete its work. Any preliminary report, memorandum or note which the Committee may have prepared or any evidence that the Committee may have taken is made available to the new Committee[32] If a Committee has

[30]24th March, 1951—Matter relating to loss in Railway collieries arising out of discussion on the relevant Supply Demand was referred by the Speaker to the Estimates Committee.

21st February, 1958—Matter relating to Dandakaranaya Scheme arising out of a discussion on a cut motion was referred by the Speaker to the Estimates Committee.

10th March, 1959—Matter relating to shortfall in production at the Bharat Electronics arising out of supplementaries to questions was referred by the Speaker to the Estimates Committee.

[31]45th Report (First Lok Sabha) on the Ministry of Community Development and 68th Report (First Lok Sabha) on the Ministry of Defence (Ordnance Factories).

[32]Sixth Report of 1953-54.

Seventh Report of 1953-54.

completed the report but is not able to present it to the House before its dissolution, the report is laid[33] on the Table by the Secretary of the House in the new House.

In the U.K., no such provision exists. The Committee becomes *functus officio* on prorogation and there is no provision whereby a successor Committee can take up the unfinished work of the previous Committee, unless the House authorises the new Committee to take up the work by specifically mentioning it in the motion[34] for the appointment of the new Committee or by a separate *ad hoc* Committee. There is also no provision for the printing, publication or circulation of the report of the Committee before its presentation to the House.

In India, written questionnaires are sent to the departmental witnesses for written replies before they are called to give oral evidence. Even during evidence, when questions are asked the witness may not give an answer immediately but suggest that a written memorandum will be supplied later. Consequently much of the work of the Committee is carried on in writing and less reliance is placed on or use is made of the oral evidence because it is only in amplification of the written replies. While the Committee calls for one or two witnesses from a Ministry, a practice has grown for the heads of Ministries and Departments to bring with them a large number of subordinate officers and records to the Committee. During the evidence, very little use is made of the records brought by the subordinate officers and of course there is very little consultation between the heads of Departments and junior officers in the Committee. For most of the time, therefore, the junior subordinate officers are merely present there to watch the proceedings. The

Tenth Report of 1953-54.
(Minutes dated the 14th May 1953—Vol. 3).
Thirty-third Report (Second Lok Sabha).
Thirty-sixth Report (Second Lok Sabha).

[33]67th Report (First Lok Sabha) Ministry of Defence—Hindustan Aircraft.
68th Report (First Lok Sacha). Ministry of Defence—Ordnance Factories.

[34]The following paragraph from the motion appointing the Estimates Committee for 1956-57 is relevant.
That the minutes of the Evidence taken before Sub-Committees D, E and F appointed by the Select Committee on Estimates in the last Session of Parliament, which were laid before the House on 5th November, be referred to the Committee.
(House of Commons Deb., 1956-57; Vol. 561; Cols. 1645-6).

Committee has time and again brought it to the notice of the Ministries that only principal witness should come ; but it has not excluded the other junior and subordinate officers from the meeting lest departmental witnesses should feel that they had not the necessary assistance at their disposal while giving their evidence. In the U.K., although the Departments concerned are asked to send whatever witnesses are most suitable only a few witnesses who are intimately connected with the subject matter of discussions appear before the Committee. Much of the material is collected in oral evidence. The witnesses give as much information as possible orally and there is very little left to be given in writing. Consequently, the Committee gets a more vivid picture and is able to appreciate the background better and its report is largely based on such evidence. This is not to say that written evidence is not placed before the Committee. Usually in the first instance Departments do send written memoranda and later may also supply further documents in amplification of oral evidence, all of which are printed along with oral evidence, but the volume of such written evidence is considerably small compared to the practice in India in this regard.

In the U.K., the Committee works mostly on Party lines as is evident from the divisions in the Committee on more important matters under discussion by the Committee. In India, on the other hand, the Committee works on non-party lines and there has been no division so far in the Committee on any matter before the Committee. Members of the Opposition have frequently testified to the non-party character of the Committee.[35]

In India, while the Committee is deliberating or taking evidence, refreshments are served. The Members also smoke and there is a good deal of informal atmosphere. The Committee also sits for a number of hours at a stretch. In the U.K., the Committee generally sits not more than two hours at a time. There is a formal atmosphere. No refreshments of any kind are served though members do smoke during deliberations but that too is prohibited during the taking of evidence.

Both in the U.K. and India the Estimates Committee has been working without the aid of the experts, unlike the Congressional Committees of the United States of America, that is to say, the Committee does not have the assistance of whole-time servants who

[35] *See* 'A Review of the Financial Committees, 1959'.

are experts technically in the subjects which are under its examination. The Committee has not even the assistance of the Comptroller and Auditor-General. It has always been held that the Committee is a layman's committee and it must bring to bear the point of view of the layman on the matters under examination. If the Committee were to be assisted by experts then it might well happen that the Committee is dominated by those experts and ultimately it may lead to putting up experts on the Committee against the experts of the Government. Thereby there is a danger of conflict between the Committee and the Government and Parliament will lose the benefit of the advice of its own members assembled in the Estimates Committee. If an expert enquiry is wanted it should best be left to the department to consitute such an enquiry and the experts should be left to themselves to make suggestions. The Estimates Committee should not become a tool for expert examination which, properly speaking, is the sphere of the executive government.

In the U K., the question of association of experts with the Committee has been raised in the past now and again, but the House of Commons wisely has always decided against it. In India, on the other hand, the Committee has never raised any question of expert assistance as during the years of its existence it has felt quite confident of dealing with the matters that have come before it in its own way. The previous Chairman of the Committee has, however, sometimes raised the question of associating experts with the Committee on a temporary basis but on the above considerations being pointed out to him he agreed that it was not correct in the long run to press for such assistance. The Committee should call, and in fact, the Indian Estimates Committee has often called, official and non-official experts as witnesses and gathered their opinion about the various matters under its examination and then the Committee, after having sifted such evidence, has come to its own conclusions without in anyway basing its reports on direct reference to such evidence save in a few isolated instances[36].

Both in India and the U.K., the Committees have been very much alive to the need of keeping separate the Parliamentary and executive responsibilities. The Committees have in various ways tried to steer clear of executive responsibilities, that is, they have

[36]Thirty-third Report of the Estimates Committee (Second Lok Sabha) on Steel.

avoided all such steps which might involve them at the stage of formulation of policy or in the execution of the policy. For this reason the Indian Committee has, despite suggestions made to it from time to time, always turned down the proposal that it should examine the supplementary estimates before they are presented to the House. Since the supplementary estimates before presentation to the House are still in the executive field the Committee has thought it unwise to begin examination of the estimates at that stage. The Committee has always held that it could be fully seized of the supplementary estimates after they are presented to the House. Similarly, whenever the Committee has watched the implementation of the recommendations made by it from time to time the Committee has endeavoured to keep itself aloof from executive responsibility in watching the actual implementation. It is enough for the Committee if the Government say that they had accepted the recommendation or that necessary steps were being taken by them to implement a suggestion. The Committee has not gone further to see whether in fact the recommendation has been implemented. Of course, when the Committee takes up the examination of the estimates of the Ministry in the second or subsequent round it might examine generally the effect of the implementation of previous recommendations and so on but the Committee has not pursued the actual implementation in individual cases.

It has sometimes been said[37] that the officers who attend before the Estimates Committee are required to defend the policy of the Government. This is not a fact. The Committee has never asked the official witnesses to explain the reasons behind or merits or the demrits of the Government's policy. The Committee has always thought that that lay in the sphere of a Minister and the House. The Committee has asked the departmental witnesses to explain how a policy is being implemented in practice by the executive officers. That is perfectly within the competence of the officers to say and to explain. Even if a question borders on a policy matter and the departmental witness says that that was a matter which lay in the sphere of the Minister to explain in the House the Committee has left the matter there and not tried to probe into it further. The idea

[37]Address by Shri A.K. Chanda on Parliamentary Control over national expenditure, to the members of the Madras Legislature.
(*Madras Legislature Information*, March 1959, Vol. 1. No. 1).

behind calling departmental witnesses to appear before the Committee is that since the expenditure is authorised by the Civil Servants and is actually incurred by them it is they, properly speaking, who should be answerable for any wastes or mismanagement or mis-spending of funds in the execusion of the policy laid down by Parliament. Therefore, there is a rule that the Committee should not ask the Ministers to appear before the Committee because firstly the Ministers are concerned with policy matters which the Committee does not enquire into and secondly the Ministers do not sanction day to day expenditures under the rules of business of Government and therefore they would not be able to explain why particular expenditures have been incurred. It is therefore that the Civil Servants and more particularly the Head of the Ministry or Department or Undertaking is called upon to justify the expenditures incurred by the Ministry or Department. This position obtains both in India and the U.K.

It is also said[38] that the value of the recommendations made by the Committee is detracted from because the Government do not accept them. This impression is erroneous firstly because in the majority of cases the Government do accept recommendations as will be clear from the reports on the implementation of recommendations submitted by the Estimates Committee to the House from time to time. In some cases where Government have difficulties in accepting a recommendation and have reasons for that view they generally place the matter again before the Committee for its reconsideration. The Committee has in many cases accepted the Government's difficulties and dropped its earlier recommendations or it has insisted on the implementation of the recommendation. It is only in some cases that the Government have not been able to implement the recommendations at once. It should, however, be noted that the Committee's main task is to influence the Government in its long-term thinking and plans and it will be difficult for any Government to come forward immediately with the acceptance of all the recommendations. The Government have naturally to consider each matter carefully and to consult the various interests involved before it can accept a recommendation. Sometimes the Committee's recommendations are of a far-reaching character and even though the Government have in the beginning demurred in accepting a recommendation they have

[38] Address by Shri A.K. Chanda on Parliamentary control oyer national expenditure to the members of the Madras Legislature.
(*Madras Legislature Information*, March 1959, Vol. I, No. 1).

eventually[39] done so. Successive Finance Ministers and other Ministers of Government have always acknowledged the usefulness and influence of the Committee[40].

The Indian Committe has come to play an important role in the Parliamentry system and this has been widely acknowledged in India and abroad[41]. For an objective appraisal of the Committee's work it will be necessary to go through the numerous editorials and articles in the daily papers and journals, the debates in Parliament and individual letters written by knowledgeable persons and experts on work of the Committee. Barring an occasional criticism here and there on the merits or details of a recommendation or observation of the Committee there has been uniform appreciation of the work of the Committee and its useful role[42] in the financial administration of the country.

Similarly in the U.K., the Committee has won appreciation of its work from M.P.s, Press and Government. During war-time the Select Committee on National Expenditure (counterpart of peace-time Estimates Committee) did valuable work and earned the praise

[39]Nationalisation of the Imperial Bank *vide* paragraph 38, Ninth Report.

[40]Shri C.D. Deshmukh Finance Minister, in a speech delivered in the House on the 10th April, 1951 said :

"All I can say that we have every intention of treating the Estimates Committee as an ally and of seeing to what extent they will help us to conserve and apply our resources to the best possible advantage."

Winding up the debate in connection with the voting of Demands for Grants relating to the Ministry of Irrigation and Power, Shri Gulzarilal Nanda, Minister for Irrigation and Power, said on the 7th April, 1954 :

"I may also pay a special tribute to the work of the Estimates Committee * * * * I must say that their work in totality was exceedingly useful and of great assistance, and I must acknowledge it."

[41]In "Public Finance Survey: India" issued by the Department of Economic Affairs, United Nations,1951, the following passage appears :

".....Many of these reforms have been taken on the suggestion of the new Select Committee on the Estimates which started work in April 1950, and before the end of the year had issued three reports, conspicuous for the range of their coverage and constructive criticism. The Committee is following a method of investigation by sub-committees which deal with particular problems or projects as a whole, rather than stick closely to the estimates of a particular ministry. Their major contribution has been advice on the recognisation of ministries, which the Government has already taken up for early implementation."

[42]*See* "Recent Political Developments in India—II" by W.H. Morris-Jones *Parliamentary Affairs* Winter 1958-59 Vol. XII, No. 1)

of the then Prime Minister, Late Mr. (now Sir) Winston Churchill. The following extracts from his memoirs of the Second World War will show the extent to which the Committee succeeded in exerting an influence on the Government.

"Letter dated the 20th September, 1942 from the Prime Minister to the Minister of Production.

I have today read the report of the Select Committee on National Expenditure about tanks and guns. It is a masterly indictment which reflects on all who have been concerned at the War Office and the Ministry of Supply. It also reflects upon me as head of the Government, and upon the whole organisation.

So far only a formal acknowledgement has been sent to Sir John Wardlaw-Miene and his Committee. A very much more detailed and reasoned reply must be prepared, and should be in the hands of the Committee before Parliament meets on September 29. Let me know therefore before Wednesday next what you have done and are going to do in this field, and how far you are able to meet the Ccriticisms of the ommittee. Give me also the materials on which I can base a reply to the Committee, who have certainly rendered a high service in bringing this tangle of inefficiency and incompetence to my notice. It is now more than a fortnight since this report was put in your hands and those of the Ministry of Supply.

I must regard this matter as most serious, and one which requires immediate proposals for action from yourself, the Secretary of War, and the Minister of Supply, so that at any rate future may be safeguarded."[43]

"Sir John Wardlaw-Milne was the Chairman of the powerful all party Finance Committee whose reports of cases of administrative waste and inefficiency I had always studied with close attention. The Committee had a great deal of information at their disposal and many contacts with the outer circle of our war-machine."[44]

[43] *Second World War*, Vol. IV. pp. 795-96.
[44] *Second World War*- Vol IV, p. 352.

ANNEXURE

Recommendations Contained in U.K. Reports of Estimates Committee and National Expenditure Committee Involving Criticism of Policies

Year	Number of the Report	Para No.	Summary of Recommendations
			A—Recommendations criticising Government Policies
1939-40	4th (NEC)	68—72	Referring to Government's Policy of subsidising food prices, the Committee stated that the adoption of the policy had opened a range of problems for enquiry which might otherwise possibly have been considered to be outside their terms of reference and also remarked that some accurate factual records were required in order that the Ministry might be able to review the facts of its operation and consider future policy.

1940-41	6th (NEC)	20 Referring to the significance of price policy in carrying out the programme of agricultural production, the Committee pointed out that action had not been based on a preconceived and clearly defined plan and had been of a tentative nature. The Committee further stated as follows : "Considering our terms of reference, we do not feel entitled to say more than that, if waste is to be directed into the most fruitful channels it is of great importance that a continuous planned price policy should be evolved."
1940-41	24th	10 The Committee recommended reconsideration of the release of miners from the Services. (According to Government's reply *vide* page 48 item (d) of First Report of 1941-42, this recommendation affected Government policy.)
1955-56	5th	45 Referring to two major policy decisions taken by Government in regard to certain building operations the Committee proceeded to remark as follows : "It is not the function of your Committee to comment on decisions of policy. Nevertheless your Committee recommen that where such a decision necessarily involves, as this decision did, abandonment of the productive use of money already spent, the department concerned should estimate the probable extent of the loss to the public together with the financial factors making up this loss."

Year	Number of the Report	Para No.	Summary of Recommendations
1953-54	3rd	2—5	After pointing out that they were not empowered to comment on the policy which had given rise to certain votes, the committee recommended that no more public money should be invested in or lent to the British Field Products Ltd.
1955-56	7th	72	Referring to the general policy of the Naval Research Establishment to have as many tools as possible made outside, the Committee stated as follows : "Your Committee do not suggest that the policy should be reversed, but they recommend that it should be left entirely to the discretion of the superintendents whether the tools which they require are made in their own tool rooms or not."
			B—Recommendations touching upon Government Policies
1955-56	4th	...	Legal Aid Scheme } The Committee have not criticised the policy but only suggested a better implementation of the policy.
1956-57	3rd	...	Stores and Ordnance Depots of the Service Departments. }

1951-52	6th	66	Referring to the satisfactory advances made in child-care services since the Act of 1948, the Committee suggested a re-examination of the existing policy when they recommended that each Secretary of State should appoint a Committee investigating every aspect of the service for which he was responsible and particularly the financial practice and policy.
1955-56	1st	27	The Committee recommended that all municipalities should be encouraged to own and operate airports and to this end the Ministry should re-state its policy on the municipal ownership of aerodromes and the conditions upon which agreement should be based.
1953-54	2nd	21	*Abolition of the Road Fund*—The Committee suggested that it would lead to greater clarity of the estimates if the Road Funds were abolished and the expenditure on roads provided for in a normal departmental vote and added— "They, therefore, recommend that subject to there being no reasons of policy for the continuance of the present system consideration should be given by the Treasury to the introduction of the necessary legislation."
			C—*Recommendations tending to affect Policy*
1939-40	3rd	30	The Committee recommended the formation of Local Committee consisting of representatives of organisations and associations connected with land and its management, to give advice on the requisitioning of lands for Defence purposes.

Year	Number of the Report	Para No.	Summary of recommendations
1941-42	8th	9—11	The Committee recommended the setting up of Regional Executive Board consisting of a whole-time paid Chairman and regional representatives of the Ministry of Labour and the three Supply Departments to perform various functions.
1941-42	8th	24—30 and 39	The Committee also made recommendations on general aspects such as devolution of responsibility to industrial organisations, methods affecting the spirit of the workers employed in industry and the question of taking workers into confidence about matters affecting Production,
1941-42	12th		An enquiry into the appointment of two persons from private industry to positions in Government Departments. with which their own firms had contractual relations, was made and a report was presented by the Committee, without any change having been made in their terms of reference.
1941-42	16th	109	The Committee remarked that they were not satisfied that the existing arrangements for ministerial control of establishments in the Treasury were adequate and recommended the creation of a new post of Parliamentary Secretary exclusively concerned with civil service questions.

			In their reply in the Seventh Report of 1942-43 (page 15, item 'q' and page 16, item 's') the Government simply stated that fundamental changes in the machinery or Government were matters for ministerial decision.
1952-53	13th	12	The Committee recommended the appointment of a Board of Trade Attache to the Foreign Office as a commercial diplomatic representative.
1951-52	4th	26	After criticising the layout of the sales areas of a company financed from public funds, the Committee suggested a reorganisation from the existing system of geographical sales division to a system of production division.
1955-56	7th	6	The Committee recommended an immediate examination to be made of the possibility of merging naval research and development establishment with research and development establishments working in other Government Departments. The Committee, however added that the final decision on the exact establishments to be merged should rest with the Ministry of defence.
1956-57	2nd	69—103	The Committee suggested that the military aircraft programme should be critically examined against the future background with a view to ensuring that the number of projects is the absolute minimum consistent with security. It also suggested that the question of co-ordination between guided weapons and aircrafts should be carefully watched as there was clearly a sharp conflict of interest between the two fields.

5

CODIFICATION OF PRIVILEGES OF PARLIAMENT

THE powers, privileges and immunities of either House of Parliament and of its members and Committees have been laid down in Articles 105 of the Constitution of India.

In this Article, the privilege of freedom of speech in Parliament and the immunity to Members from "any proceedings in any court in respect of anything said or any vote given" by them in Parliament or any Committee thereof, are specifically provided for. This article also provides that no person shall be liable to any proceedings in any court "in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings". In other respects, however, clause (3) of this article provides that, "the powers, privileges and immunities of each House of Parliament, and of the members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and Committees, at the commencement of this Constitution", namely, 26th January, 1950.

No comprehensive law[1] has so far been passed by Parliament under clause (3) of Article 105 to define the powers, privileges and

[1](i) In 1956, the Parliament enacted the Parliamentary Proceedings (Protection of Publication) Act, 1956, sponsored by a private Member, Shri Feroze Gandhi, Section 3 of which provides :

"3. (1) Save as otherwise provided in sub-section (2), no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any

immunities of each House, and of the members and the committees thereof. In the absence of any such law, the powers, privileges and immunities of the House, and of the members and the Committees thereof continue to remain the same as those of the House of Commons, U. K., and of its members and Committees, at the time of the commencement of the Constitution, that is, 26th January, 1950.

In the United Kingdom, no attempt has so far been made to codify the entire law of privilege. There, the privileges of Parliament are based "partly upon custom and precedents which are to be found in the Rolls of Parliament and the Journals of the two Houses and partly upon certain statutes which have been passed from time to time for the purpose of making clear particular matters wherein the privileges claimed by either House of Parliament have come in contact either with the prerogatives of the Crown or with the rights of individuals."[2]

In India the plea for codification of Privileges was put forward in 1954 by the Press Commission.[3]

Referring to that plea, the late Speaker (Shri G.V. Mavalankar) in his address to the Conference of Presiding Officers at Rajkot on the 3rd January, 1955 stated as follows :

proceedings of either House of Parliament, unless the publication is proved to have been made with malice.

(2) Nothing in sub-section (1) shall be construed as protecting the publication of any matter, the publication of which is not for the public good."

The Act also applies to Parliamentary proceedings broadcast by wireless telegraphy.

(ii) In 1958-59, a private Member, Shri N. C. Bharucha, sponsored a Bill to include Members letters to Ministers within the meaning of the term "Proceedings in Parliament" but it was rejected by Lok Sabha. See L. S. Deb. dt. 20th February, 1959. cc. 2241—2304.

(ii) Under Section 321 (aa) of the Code of Criminal Procedure, Members of Parliament and Members of State Legislatures are exempt from liability to serve as jurors.

(iv) Under Section 135A of the Code of Civil Proceedure *read* with Article 105 of the Constitution, Members of Parliament and State Legislatures are exempt from arrest and detention under civil process during the continuance of a session and during the forty days before and after such session.

[2]Halsbury's Laws of England, 2nd Ed. Vol. XXIV, pp 345-46.

[3]Report of the Press Commission (1954), Part I, p 421 (Para 1096).

"The Press Commission considered this matter purely from the point of view of the Press. Perhaps they may have felt the difficulties of the Press to be real; but from the point of view of the legislature, the question has to be looked at from a different angle. Any codification is more likely to harm the prestige and sovereignty of the legislature without any benefit being conferred on the Press. It may be argued that the Press is left in the dark as to what the privileges are. The simple reply to this is that those privileges which are extended by the Constitution to the legislature, its members etc. are equated with the privileges of the House of Commons in England. It has to be noted here that the House of Commons does not allow the creation of any new privileges; and only such privileges are recognized as have existed by long time custom. No codification, therefore, appears to be necessary."

The Conference of Presiding Officers unanimously decided that "in the present circumstances, codification is neither necessary nor desirable."

The question of undertaking legislation on the subject has engaged the attention of the Presiding Officers since 1938. Before 1947, the question was whether sections 28/71[4] of the Government of India Act, 1935 should be so amended so that the privileges of the Indian Legislatures were made the same as those enjoyed by the British House of Commons.

At the Conference held in 1939 the discussion proceeded on the basis of the Bengal Legislative Assembly Powers and Privileges Bill, 1939,[5] introduced in the Bengal Legislative Assembly on the 12th July, 1939. The Conference agreed that there should be a definition of the privilege. However, no legislation on the subject was ultimately passed in the Bengal Legislature.

In 1947, the Conference agreed that each Province should send its own draft of privileges Bill to the Central Assembly Department and thereafter a special session of the Conference might be called to consider the matter. However, in view of the announcement made by the Government of the U.K. on the 20th February, 1947, regarding transfer of power to India, the Chairman informed the Presiding Officers of State Legislatures that it would serve little purpose if

[4] *See* Annexure—I.
[5] *See* Annexure—II.

they took up the drafting of a Privileges Bill before the Constitution was settled.

In September, 1949, when the question of enacting legislation on the subject was considered by the Conference, the Chairman (the late G.V. Mavalankar) expressed the view:

> "It is better not to define specific privileges just at the moment but rely upon the precedents of the British House of Commons. The disadvantage of codification at the present moment is that whenever a new situation arises, it will not be possible for us to adjust to ourselves to it and give members additional privileges. Today, we are assured that our privileges are the same as those of the Members of the House of Commons.....
>
> In the present set up any attempt at legislation will very probably curtail our privileges. Let us, therefore, content ourselves with our being on a par with the House of Commons. Let that convention be firmly established and then we may, later on, think of putting it on a firm footing."

After some discussion, it was agreed by the Conference that a preliminary survey might be made to collect ideas as to what the privileges should be and to visualise the points on which legislation might be necessary. A Committee consisting of four Speakers was appointed to examine the recommendations received from the Provinces on this matter.

In their Report, the Committee of Speakers, made, *inter alia*, the following observations :—

> "Article 194(3) of the Constitution of India provides that in other respects—other than those referred to in clauses (1) and (2) of the article—the powers, privileges and immunities of a House of the Legislature of a State, and of the members, and the Committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and Committees, at the commencement of the Constitution. It seems from this that, as soon as a Legislature enacts a law defining the powers, privileges and immunities of its members, the privileges of the House of Commons will not be available to the members of the Legislature. The Committee is doubtful as to whether under article 194(3) a Legislature can enact a law defining the

powers, privileges and immunities of its members in certain respects only and also providing therein that in other respects the powers, privileges and immunities will be those of the House of Commons. The Committee is of the opinion that if it is competent to a Legislature under this article to enact such a law, then only the Legislature should undertake a legislation defining the powers, privileges and immunities of Members. Otherwise, it would not be advisable to undertake any legislation at present. Whether it is open to the Legislature to do so or not depends upon the interpretation of article 194(3). As the question is one of legal interpretation, the Committee has left the matter for the decision of the Speakers' Conference."

The issue of the codification of privileges and the Report of the Committee of Speakers was discussed in detail at the Conference of Presiding Officers held in August, 1950. In his opening address to the Conference, the Chairman (late Shri G.V. Mavalankar) observed :—

"I believe it might not be out of place here if I were to express as to how I feel about the question of legislation on matters of privileges. I may atonce say that I have an open mind and would willingly abide by the decisions that the Conference takes. But my own reaction for the time being is that we may allow the matter to rest for the present where it is, specially in view of the present level of parliamentary life in the country and the set-up of Governments. The Constitution has granted the maximum possible privileges when the same are equated to those of the House of Commons. Legislation in respect thereof is, therefore, now not at all necessary, or at least not so necessary as it was when the privileges were very much restricted. Further, I feel two great difficulties and handicaps if we were to think of any legislation in respect of the privileges. These are—

(i) Any legislation at the present stage would mean legislation only in regard to matters acceptable to the executive Government of the day. It is obvious that, as they command the majority, the House will accept only what they think proper to concede. It is important to bear in mind that the privileges of members are not to be conceived with reference to this or that party, but as privileges of every member of the House, whether he belongs to Government or the opposition party. My fears are, therefore, that an attempt at legislation would mean a substantial curtail-

ment of the privileges as they exist today. We may think, therefore, of legislation after a few years, by which time we may expect that sound parliamentary conventions will grow.

(ii) My second reason is that any legislation will crystallize the privileges and there will be no scope for the presiding authorities to widen or change the same by interpretation of the privileges as they exist in the British Parliament. Today they have an opportunity of adapting the principles on which the privileges exist in the United Kingdom to conditions in India.

I may here invite your attention to the Secretary's (Shri M. N. Kaul's) note on the subject which is being circulated to you. It points out a fundamental aspect of the question which deserves careful and anxious consideration".

In his note referred to above, Shri M.N. Kaul had emphasized *inter alia* :—

"Our Constitution has one important peculiarity in that it contains a declaration of fundamental rights and the Courts have been empowered to say that a particular law or a part of a law is void or invalid because it is in conflict with a particular fundamental right and therefore beyond the powers of Parliament.

At the present time, and until Parliament has codified its privileges, the privileges of Parliament are defined in the Constitution itself as being the same as those of the House of Commons in United Kingdom. It follows from this fact that at the present time the privileges of Parliament are part and parcel of the Constitution and therefore, of what is known as the 'fundamental law'. The Courts will, therefore, be compelled to reconcile the existing law of privilege, which carries with it the power of the Speaker to issue a warrant without stating the grounds on the face of it, with the fundamental rights. It will be extremely difficult for the Supreme Court to say that what is so explicitly provided in a part of the Constitution in regard to the existing privileges of Parliament is in any way restricted by the fundamental rights.

Once, however, the privileges are codified by an Act of Parliament in India, the position changes entirely...the statute will be examined in the same way as any other statute passed by Parliament, and

the Courts may Welcome to the conclusion that, in view of the provisions in the fundamental rights, it is not open to any legislature in India to prescribe that the Speaker may issue a valid warrant without disclosing the grounds of commitment on the face of the warrant . all matters would (then) come before the courts and Parliament would lose its exclusive right to determine matters relating to its privilege."

It may be mentioned here that in 1958, the Supreme Court, (in their majority judgment) in the *Searchlight* case, upheld this view and declared :

"It is true that a law made by Parliament in pursuance of the earlier part of Art. 105(3) or by the State Legislature in pursuance of the earlier part of Art. 194(3) will not be a law made in exercise of constituent power...but will be one made in exercise of its ordinary legislative powers under Art. 246 read with the entries referred to above and that consequently if such a law takes away or abridges any of the fundamental rights, it will contravene the peremptory provisions of Art. 13(2) and will be void to the extent of such contravention and it may well be that that is precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities just as the Australian Parliament had not made any under section 49 of their Constitution corresponding to Art. 194(3).....It does not however, follow that if the powers, privileges or immunities conferred by the latter part of those Articles are repugnant to the fundamental rights, they must also be void to the extent of such repugnancy. It must not be overlooked that the provisions of Art 105(3) and Art. 194(3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III".

"Article 19(1) (a) and Art. 194(3) have to be reconciled and the only way of reconciling the same is to read Art. 19(1) (a) as subject to the latter part of Art. 194(3)...In our judgment the principle of harmonious construction must be adopted and so constructed, the provisions of Art. 19(1) (a), which are general must yield to Art. 194(1) and the latter part of its clause (3) which are special."

Mr. Justice K. Subba Rao, in his minority judgment in the same case, however, observed *inter alia* :

"The first thing to be noticed in cl. 3 of Art. 194 is that the Constitution declares that the powers, privileges and immunities of a House of Legislature of a State and of the members and Committees of a House of such Legislature are such as defined by the Legislatures by law. In the second part, as a transitory measure, it directs that till they are so defined, they shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and Committees, at the commencement of the Constitution. I find it impossible to accept the contention that the second part is not a transitory provision; for, the said argument is in the teeth of the express words used therein. It is inconceivable that the Constituent Assembly, having framed the Constitution covering various fields of activity in minute detail, should have thought fit to leave the privilege of the Legislatures in such a vague and nebulous position compelling the Legislatures to ascertain the content of their privileges from those obtaining in the House of Commons at the commencement of the Constitution. I have no doubt, therefore, that part two of cl. (3) of Art. 194 is intended to be a transitory provision and ordinarily, unless there is a clear intention to the contrary, it cannot be given a higher sanctity than that of the first part of cl. (3).

When the Constitution expressly made the laws prescribing the privileges of the Legislature of a State of our country subject to the fundamental rights, there is no apparent reason why they should have omitted that limitation in the case of the privileges of the Parliament of the United Kingdom in their application to a State Legislature.

The contention also, if accepted, would lead to the anomaly of a law providing for privileges made by Parliament or a Legislature of our country being struck down as infringing the fundamental rights, while the same privilege or privileges, if no law was made, would be valid.

It may not be out of place to suggest to the appropriate authority to make a law regulating the powers, privileges and immunities of the Legislatures instead of keeping this branch of law in a nebulous state, with the result that a citizen will have to make a research into the unwritten law of the privileges of the House of Commons at the risk of being called before the Bar of the Legislature."

(A.I.R., 1959, S.C. 395—422).

Speaking in Lok Sabha on the 20th February, 1959, on a private Member's "The Parliamentary Privilege Bill" which sought to include Members' letters to Ministers within the meaning of the term "Proceedings in Parliament", the former Minister of Law, Shri Asoke K. Sen observed[6] :

> "After all, it is now acknowledged more or less universally that matters of privilege should be left uncodified rather than codified ...It is all the more so in this country. Though in England, Parliament may, if it so chooses, pass any law concerning privilege without any limitation whatsoever either by way of extending it or restricting it, in this country the moment we think of passing any law we shall have to contend with the limitations which the Constitution imposes upon us. Let us not be deluded into the idea that this House can pass any law concerning its privileges. It is all right to stick to those which have been inherited by reason of article 105 of the Constitution. But the moment we try to legislate, some of the laws we have inherited may be condemned if we try to codify them by passing laws ourselves, for, the whole of the limitations in part III of the Constitution and the other limitations will have full play the moment Parliament seeks to legislate. That matter has been made quite clear in the recent judgment of the Supreme Court in the Patna *Searchlight* case wherein it appears to have been laid down that if Parliament sought to pass a law seeking to confer some privilege which it now enjoys, it might have been bad in law as well as against the Constitution.
>
> Yet, since no law has conferred it, and it is only a matter of inheritance, we continue to enjoy it. That is the position. Therefore, I think it will be a good rule of caution and prudence if we do not indulge in large scale legislation or indiscriminate legislation concerning the privileges of this House or of the other House. After all, centuries of experience of other Parliaments have cautioned them against landing themselves into a body of codified laws of privilege. I think we can safely follow it as a rule of caution"

The latest pronouncement on the subject by the Supreme Court was made in their Opinion on the Special Reference (No. 1 of 1964)

[6] *See* L.S. Deb. 20-2-1959 cc. 2275—76.

made by the President in Keshav Singh's case. The majority Opinion of the Supreme Court observed :—

"That takes us to clause (3). The first part of this clause empowers the Legislatures of States to make laws prescribing their powers, privileges and immunities ; the latter part provides that until such laws are made, the Legislatures in question shall enjoy the same powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. The Constitution-makers must have thought that the Legislatures will take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities which are contemplated by clause (3), are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3).

The implications of the first part of clause (3) may, however, be examined at this stage. The question is, if the Legislature of a State makes a law which prescribes its powers, privileges and immunities, would this law be subject to Art. 13 or not ? It may be recalled that Art. 13 provides that laws inconsistent with or in derogation of the fundamental rights would be void. Clause (1) of Art. 13 refers in that connection to the laws in force in the territory of India immediately before the commencement of the Constitution, and clause (2) refers to laws that the State shall make in future. *Prima facie*, if the legislature of a State were to make a law in pursuance of the authority conferred on it by clause (3), it would be law within the meaning of Art. 13 and clause (2) of Art. 13 would render it void if it contravenes or abridges the fundamental rights guaranteed by Part III. As we will presently point out, that is the effect of the decision of this Court in Pandit Sharma's case. In other words, it must now be taken as settled that if a law is made under the purported exercise of the power conferred by the first part of clause (3), it will have to satisfy the test prescribed by the fundamental rights guaranteed by the Constitution. If that be so, it becomes at once material to enquire whether the Constitution-makers had really intended that the limitations prescribed by the fundamental rights subject to which alone a law can be made by the Legisla-

ture of a State prescribing its powers, privileges and immunities, should be treated as irrelevant in construing the latter part of the said clause. The same point may conveniently be put in another form. If it appears that any of the powers, privileges and immunities claimed by the House are inconsistent with the fundamental rights guaranteed by the Constitution, how is the conflict going to be resolved. Was it the intention of the Constitution to place the powers, privileges and immunities specified in the latter part of cl. (3) on a much higher pedestal than the law which the legislature of a State may make in that behalf on a future date ? As a matter of construction of clause (3), the fact that the first part of the said clause refers to future laws which would be subject to fundamental rights, may assume significance in interpreting the latter part of clause (3)."

Mr. Justice Sarkar in his dissenting Opinion, however, observed :—.

"Then as to the second part of Art. 194(3) being transitory, that depends on what the intention of the Constitution makers was. No doubt it was provided that when the law was made by the Legislature under the first part of Art. 194(3) the privileges of the House of Commons enjoyed under the latter part of that provision would cease to be available. But I do not see that it follows from this that the second part was transitory. There is nothing to show that the Constitution makers intended that the Legislature should make its own law defining its privileges. The Constitution makers had before them when they made the Constitution in 1950, more or less similar provisions in the Australian Constitution Act, 1901 and they were aware that during fifty years, laws had not been made in Australia defining the privileges of the Houses of the Legislatures there but the Houses had been content to carry on with the privileges of the House of Commons conferred on them by their Constitution. With this example before them I have no reason to think that our Constitution makers, when they made a similar provision in our Constitution, desired that our Legislatures should make laws defining their own privileges and get rid of the privileges of the House of Commons conferred on them by the second part of Art. 194 (3). I think it right also to state that even if the rights conferred by the second part of Art. 194(3) were transitory, that

would not justify a reading the result of which would be to delete a part of it from the Constitution."

(A.I.R. 1965 S.C. 745).

Position in other Commonwealth Countries

In the United Kingdom, the privileges of Parliament have not been codified so far. There, the privileges of Parliament are based largely upon custom and precedents. There are, however, certain statutes also which have been passed from time to time for the purpose of making clear particular matters wherein the privileges claimed by the Houses of Parliament have come in contact either with the prerogatives of the Crown or with the rights of individuals. In this connection, the Select Committee of the House of Commons, U.K. on the Official Secrets Acts, in their report 1939 observed :

"The privileges of Parliament, like many other institutions of the British constitution, are indefinite in their nature and stated in general and sometimes vague terms. The elasticity thus secured has made it possible to apply existing privileges in new circumstances from time to time. Any attempt to translate them into precise rules must deprive them of the very quality which renders them adaptable to new and varying conditions, and new or unusual combinations of circumstances, and indeed, might have the effect of restricting rather than safeguarding members' privileges, since it would imply that, save in the circumstances specified, a member could be prosecuted without any infringement of the privileges of the House. 'The dignity and independence of the two Houses,' says Sir William Blackstone with great force, 'are in great measure preserved by keeping their privileges indefinite. If all the privileges of parliament were set down and ascertained and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member and violate the freedom of parliament."

(H.C. 101 (1938-39), p. (xiv), para 22).

The question of defining Parliamentary Privileges was also raised in the House of Commons, U.K., when on the 11th April, 1957, Mr. Iremonger, M.P., stated that there was considerable public doubt and anxiety on the general question of the nature and extent of Parliamentary Privileges and requested the Leader of the House

to grant some time for discussion of a Motion put on the Order Paper in the name of six Members including himself. The Motion read as follows :

> "That it be an instruction to the Committee of Privileges, in view of the prevailing public uncertainty and anxiety on the matter, to prepare and submit to the House a report which shall define the nature and clarify the purpose of Parliamentary Privilege and recommend a procedure designed to secure its equitable protection."

Mr. Butler, Lord Privy Seal and Leader of the House, promised to give due consideration to the motion, but advised the Member to take his chances through a ballot for the Private Member's Motion.

He also recommended to the House to consider some very valuable statements contained in the Report of the Selection Committee on the Official Secrets Acts of 5th April, 1939, which included the following weighty words of Sir William Blackstone : .

> "The dignity and independence of the two Houses are in great measure preserved by keeping their privileges indefinite."[7]

In some other Commonwealth countries, notably Australia and Canada, although Parliament has been empowered under the Constitution to define by law its powers, privileges and immunities, no such legislation has so far been enacted.

In the case of Australia, the powers, privileges and immunities of Parliament are governed by section 49 of the Commonwealth of Australia Constitution Act, 1900, which is in similar terms as article 105 (3) of the Constitution of India.

In the case of Canada, Section 18 of the British North America Act, 1867, as substituted by the Parliament of Canada Act, 1875, empowers the Parliament of Canada to define from time to time by Act the privileges, immunities and powers of each House of Parliament and of the Members thereof.

In 1868, the Canadian Parliament enacted a law which gave to each of the Houses, in almost the identical words used in the original section 18 of the British North America Act, 1867, the powers, immunities and privileges enjoyed by the British House of Commons at the time of passing the British North America Act,

[7]H. C. Deb., Vol. 563, cc. 1300-01.

1867 "so far as the same are consistent with and not repugnant to the said Act."

The Act stated that these were part of the general and public law of Canada and "it shall not be necessary to plead the same, but the same shall in all courts in Canada and by and before all judges be taken notice of judicially."[8]

"The privileges, immunities and powers of the Houses of Parliament of Canada are thus potentially those of the British House of Commons, although their primary base is statutory and not established custom and inherent right."[9]

In South Australia, Parliament had been empowered by section 35 of the Constitution Act, 1855-56, to define by Act the privileges, immunities and powers of two Houses and its members, provided they did not exceed the privileges, immunities and powers of the British House of Commons, as at the time of the passing of the Act. In pursuance of this authority, Parliament of South Australia in 1858 enacted the Parliamentary Privileges Act, which set out in comprehensive detail the privileges of the local legislature. This Act, however, was repealed by the South Australian Parliament in 1872, since in its actual working great difficulties were experienced. For example, it was provided in the said Act that any warrant issued by the Speaker for the apprehension and imprisonment of any person adjudged guilty of contempt should contain a statement not only that the person named therein had been adjudged guilty of contempt by the House, but also specify the nature of such contempt in the words of the Act defining the same, or in equivalent words. Power was thus given to every court that had jurisdiction in such cases to decide upon the validity of the warrant, and it was not sufficient to plead the warrant alone in answer to an application under the *habeas corpus* Act, as the validity of it could be questioned by the Court. In fact, if in the judgment of the Court, before which it came, the warrant of the Speaker was not held to be correct, "it was not worth the paper on which it was written."

James P. Boucaut, the Attorney-General while speaking on the second reading of the Bill he had introduced in 1872 to repeal the Parliamentary Privilege Act, 1858, quoted Lord Cairns as saying :

[8]The Government of Canada by Dawson, (1954 Ed.), p. 398.
[9]*Ibid.* p. 399.

"Parliament's most unmportant privilege is *not* to define their Privileges. A privilege to commit which is dependent upon the chance of some other body to whom a narrative shall be given of that which was done before their own eyes, being of the same opinion as you are as to whether it was a contempt or not, is no privilege at all."

These principles were recognized in the 1872 Act, and the 1858 Act setting out details of parliamentary privileges was repealed. In essence the 1872 Act declared that the privileges, powers and immunities of the two Houses and its members and committees were to be the same as those of the House of Commons at the time of passing of the South Australian Constitution Act in 1856. This is still the law of parliamentary privilege today in South Australia.[10]

In some Commonwealth countries notably Ceylon, Kenya, Zambia, Mauritius, Nyasaland, Trinidad and Tobago and Malaysia, the privileges of Parliament have been specifically defined by law. Similarly, in the Union of South Africa, a former member of the Commonwealth, the Parliament has, in pursuance of Section 57 of the South Africa Act, 1909, enacted the Powers and Privileges of Parliament Act, 1911, which defines and declares all the powers and privileges of the Parliament of the Union of South Africa. Section 4 of the said Act, constitutes both Houses separately or jointly a "Court of Record", which may impose fines for contempt. Further, section 5 provides machinery for removing all questions of Parliamentary Privilege from the jurisdiction of the Courts of Law.[11] Burma has also enacted legislation in 1959 defining the powers and privileges of its Parliament.

The Privileges of Members of the U. S. Congress rest primarily on the Constitution, which gives them a conditional immunity from arrest and an unconditional freedom of debate in the House. Article 1, section 6 of the U. S. Constitution provides :

"They (the Senators and Representatives) shall in all cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they (the Sena-

[10]Responsible Government in South Australia by Gordon D. Combe, pp. 104-05.

[11]Parliamentary Procedure in South Africa by Ralph Kilpin. p. 191

tors and Representatives) shall not be questioned in any other place."

According to Rule IX of Rules of the U. S. House of Representatives : "Questions of Privilege shall be, first those effecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members individually in their representative capacity only; and shall have precedence of all other questions except motions to adjourn."

In U. S. A. each House of the Congress has the power to punish its Members for disorderly behaviour and other contempts of its authority, as well as to expel a Member for any cause which seems to the House to render it unfit that he continues to occupy one of its seats.[12] This power is generally enumerated in the Constitution[13] of the U.S.A. In such cases, the courts of law cannot inquire into the justice of the decision, or even so much as examine the proceedings of the House to see whether or not the proper opportunity for defence was furnished [14]

Although, the Constitution is silent about the power of the Houses of Congress to punish non-Members for committing contempts of their authority, each House has the inherent power to punish contempts of its authority by persons, other than Members, where they are committed in its presence, or where they tend directly to embarrass or obstruct its legislative proceedings.[15] This power was first judicially confirmed in the 1821 case of *Anderson* v. *Dunn*.[16] In that case, John Anderson, a citizen, was arrested on a general warrant issued by the Speaker under the direction of the House, tried, and censured by the House, for attempted bribery of a Member of the House of Representatives. After being reprimanded by the Speaker at the Bar of the House, he was discharged from

[12]Cooley's Constitutional Limitations, 8th Ed. Vol. I. p. 271.

[13]Art. 11. Sec. 5, cl. 2 of the U. S. Constitution provides :

"Each House may determine the Rules of its proceedings, punish its Members for disorderly behaviour, and, with the concurrence of two-thirds, expel a Member."

[14]Cooley's Constitutional Limitations, 8th Ed. Vol. I, p. 271. See also *Hiss* v. *Bartlett*, 3. Gray, 468; *Anderson* v. *Dunn*, 6 Wheat 204; *French* v. *Senate*, 146 cal. 604.

[15]Cooley's Constitutional Limitations. 8th Ed. Vol. I. p. 272.

[16]Wheat 204 (1821); Hinds' Precedents. Vol. II.1606-07.

custody. John Anderson, thereupon, brought a suit against the Serjeant-at-Arms of the House for assault, battery and false imprisonment, which was finally settled by a decision of the United States Supreme Court, delivered by Mr. Justice Johnson in February, 1821. The Supreme Court affirmed that either House of the Congress has the power to commit any person for its contempt as an essential implied power,[17] As explained in a later case,[18] in Anderson v. Dunn, it was "explicitly decided that from the power to legislate given by the Constitution to Congress there was to be implied the right of Congress to preserve itself; that is, to deal by way of contempt with direct obstructions to its legislative duties.[19]

In recent years, however, the Congress has practically abandoned its practice of utilizing the coercive sanction of contempt proceedings at the bar of the relevant House against contumacious witnesses, and has instead invoked the aid of the Courts in protecting itself against contumacious conduct.[20] It has become customary to refer 'contempt of Congress' cases against contumacious witnesses to the Department of Justice for criminal prosecution under the statute law.[21]

It is settled in English law that a commitment for contempt by the House of Commons is not examinable by any Court.[22] The exclusion of *lex parliamenti from the* lex *terrae* or law of the land, has precluded judicial review of exercises of the legislative contempt power :[23]

The American Courts have, however, never followed the English practice and precedents on the non-review-ability of the legislative exercises of the contempt power.[24] As Chief Justice Warren of U.S. Supreme Court has stated : "Unlike the English practice, from the

[17]A Commentary on the Constitution of the United States Vol. I, by Dr. Bernard Schwartz p. 122; Jefferson's Manual. p. 123.

[18]*Marshall* v. *Gordon*. 243 U. S. 521 (1917).

[19]*Marshall* v. *Gordon* 243 U. S. 521 537 (1917) quoted also by Dr. Bernard Schwartz, Vol. I. p. 122.

[20]A Commentary on the Constitution of the United States by Dr. Bernard Schwartz, Vol. I, p. 125.

[21]*Ibid.*

[22]May, 17th Ed. pp. 93 and 173.

[23]A Commentary on the Constitution of the United States by Dr. Bernard Schwartz, Vol. I. p. 124.

[24]*Ibid.*

very outside the use of the contempt power by the legislature was deemed subject to judicial review."[25]

It is seen that the United Kingdom, Canada, Australia and India have not so far codified the privileges of Parliament. On the other hand, a number of Commonwealth and other countries like Ceylon, Kenya, Malaysia, Zambia, Burma, South Africa, ect., have defined and declared the privileges of their Parliaments by law.

In India, the demand for codification of the privileges of Parliament has been raised from time to time both inside and outside Parliament. The Press has been particularly foremost in raising this demand.

On the 23rd March 1967, when the Speaker made an announcement in Lok Sabha regarding a Writ Petition field in the Supreme Court against the Speaker and Members of the Committee of Privileges, questions were raised in the House whether legislation should be undertaken to define the privileges of the House. The Minister of Law, Shri P. Govinda Menon, thereupon, stated that if the view of the House was that legislation should be undertaken on the subject defining the privileges of Parliament.that would be a welcome step and he would be happy to have steps taken in that direction. The Minister of Law has further in reply to a question on the 21st June, 1967 stated that the question of defining the Privileges is under consideration.

So far the predominant opinion has been against any codification and for leaving the position as it is. Those who do not agree with this view give several reasons for codification. Broadly speaking, these reasons fall into the following categories :

(a) It is undignified for a sovereign country like India to write in its Constitution that the privileges, powers and immunities of its Parliament and legislatures are equated to those enjoyed by the British House of Commons.

(b) There should be a clear exposition of the various privileges, powers and immunities which the House of Parliament, their Members and Committees enjoy and they should be made definite and precise in their meaning.

[25] *Watkings* v. *United States* 354. U. S. 178. 192 (1957), cited by Dr. Bernard Schwartz in his Commentary on the Constitution of the United States, Vol. I.

(c) The privileges, powers and immunities of Houses of Parliament and their Members should be restricted to the barest minimum.

(d) The courts should have full power to enquire into the existence of privileges, powers and immunities claimed by the Houses of Parliament and their proper exercise by the Houses; and to set aside any order made by the Houses or to give interim relief to a complainant pending final disposal of the complaint.

As regards (a) above, the Constituent Assembly of India of its own accord and voluntarily decided that such a provision should be made in the Constitution. The relevant passages from the debates of the Constituent Assembly are reproduced in Annexure III. The provision is of an interim nature only. It is provided in the Constitution that Parliament and legislatures should in due time make laws defining their privileges, powers and immunities. The Constituent Assembly had no time to do it when the Constitution was being made. It was their opinion that the matter should be studied leisurely and after sufficient experience had been gathered, proposals in this regard formulated. It is a matter of opinion whether the time has come when an attempt should be made to undertake this work. A strong argument now in favour of such a course is that during the last 17 years sufficient experience has been gained and sound conventions and a number of precedents have grown on the subject. It is, therefore, worthwhile examining whether the interim provision should be replaced now by a permanent law which will do away with the necessity of referring to the position in the British House of Commons.

As regards (b) above, there is no doubt that it will be helpful if there is the clearest exposition of the various privileges, powers and immunities which the Houses of Parliament, their Members and Committees enjoy. In fact attempts have been made during the last 17 years to enumerate these privileges, powers and immunities at one place. However precisely the law of privilege may be stated, there is bound to grow from time to time a body of precedents and case law on the subject which in due course will accumulate. Law alone will not be sufficient. The decisions made by the Houses from time to time, the reports of the Privileges Committee, the debates in the Houses, the judgments of the courts will also steadily increase along with the law and they will all form the whole body of law of

privilege. Even as it is, the law that is at present applicable is not unknown. It is stated in May's Parliamentary Practice, reports of various Privileges Committees, debates in the Houses and various books that have appeared on the subject. A point to be noted in this connection is that despite one's wishes and attempts, the law relating to privileges, powers and immunities can never be made definite and precise absolutely ; because the most important privilege of a House of Parliament is to punish any one for its contempt and what constitutes contempt can never be precisely defined. In any definition a residue will always remain undefined. The House will have the power to punish for any contempt and the House will be the sole judge to determine what constitutes contempt and in what circumstances and what punishment should be given for it in each case.

As regards (c) and (d), if the intention behind the codification is that the present privileges should be whittled down or curtailed, either expressly or by choosing words and phrases which will amount to such curtailment, then the motive behind the suggestion for codification is liable to be misunderstood. Codification should not mean that the present privileges, powers and immunities which are essential for a Parliament should in any way be abridged or curtailed. If codification also means that there should be an external authority other than the House, say courts of Law, who should enquire into the existence of privileges, powers and immunities enjoyed by the Houses of Parliament, or that the courts should have the right to entertain appeals against orders of the Houses of Parliament or should have the power to set aside any order passed by the Houses of Parliament or grant interim relief to the complainants, then the purpose is not to codify the privileges, powers and immunities of Parliament, but to take away or curb those powers under the suggestion of codification. The privileges, powers and immunities which are at present enjoyed by the British House of Commons are the barest minimum which a Parliament should have to protect its authority, dignity and honour and therefore Parliament will have to be vigilant that when any law to define and declare privileges, powers and immunities of Parliament is undertaken, it is ensured that the present position is kept intact. It is essential that as originally envisaged by the Constituent Assembly, the authority of the Courts is ousted. It is relevant in this connection to quote what the Speaker of Lok Sabha and the Conference of Presiding Officers

stated in January, 1965. The relevant passages from the speech of the Speaker of Lok Sabha and the resolution of the Conference of Presiding Officers are given at Annexure IV.

The courts in India have clearly stated that if the present provision in the Constitution is replaced by an ordinary law of Parliament, the courts will have full power to examine *vires* of such law, to entertain applications and writ petitions as in the case of any other law and to pass such judgment as the courts may deem fit.[26] In the face of this clear exposition by the courts, any ordinary law will not meet the requirements of the case. Therefore in order to achieve the purpose it is essential that in case privileges, powers and immunities of Parliament have to be codified, they should from part of the Constitution itself and it has to be specifically provided therein that the authority of the courts to enquire into them is barred. Further, the privileges will have to be stated in such a way that they are adaptable to new and varying conditions and new or unusual combinations of circumstances. The whole idea should be that the authority, dignity and the independence of the Houses should be preserved with the aid of the power of the Houses to apply the privileges to all circumstances and cases that may arise and not be limited by any interpretation of the strict definition; and the Houses should not be rendered helpless in any new case which may threaten to violate their freedom.

To sum up, the time is perhaps ripe when an exploratory survey should be undertaken to see whether and how the privileges, powers and immunities of the Houses of Parliament, their Members and Committees should be defined and declared and for this purpose a Study Committee of Parliament should be appointed by Parliament to study the subject in all its aspects and to make a report which may form the basis for appropriate legislation. The Committee should also examine and report whether a complete and comprehensive law should be enacted at the same time, or it should be made piecemeal under different headings from time to time and further how much of it should be embodied in the Constitutions and what points should be in the form of ordinary law.

ANNEXURE I

Section 24 (7) of the Government of India Act, 1919

24(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either, chamber or by reason of anything contained any offiicial report of the proceedings of either chamber.'

Section 28 of the Government of India Act, 1935

Privileges, etc. of members

28. (1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature, and until so defined shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee to do so :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor General exercising his individual judgment.

(5) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

ANNEXURE II

*The Bengal Assembly Powers and Privileges Bill, 1939**

A

BILL

To regulate the powers and privileges of members of the Bengal Legislative Assembly.

Preamble

WHEREAS by Section 71 of the Government of India Act of 1935 the privileges of members of a Chamber of Provincial Legislature shall be such as may from time to time be defined by an Act of the Provincial Legislature.

AND WHEREAS it is expedient to define the privileges of the Bengal Legislative Assembly and of the members thereof.

AND WHEREAS it is essential to make other provisions, so that the Assembly and the other members thereof may duly and properly discharge their duties and functions,—

BE it hereby enacted as follows :

Short Title

1. This Act may be called the Bengal Assembly Powers and Privileges Act, 1939.

Commencement

2. It shall come into force with effect from such date as it may receive the assent of the Governor in accordance with the provisions of Sections 75 of the Government of India Act of 1935.

Freedom of Speech and Debate

3. (1) There shall be freedom of speech in the Assembly or any Committee thereof and such freedom of speech shall not be liable to be impeached or questioned in any court.

(2) Nothing in any Rules and Standing Orders regulating the procedure of the Assembly shall be deemed to take away the right

*Published in the Calcutta Gazette, 27th July, 1939.

of any member conferred on him by Section 71 of the Government of India Act of 1935 or by any of the provisions of this Act and no member shall be liable to any civil or criminal proceedings in any court in respect of anything said or any vote given by him in the Assembly or in any Committee thereof contrary to such Rules and Standing Orders, and in any proceeding in any court he shall be deemed to have the right as conferred on him by Section 71 of the said Act or by any of the provisions of this Act, as if there were nothing in such Rules and Standing Orders restricting him in any authorised manner.

Members not liable to Civil or Criminal Action

4. No member shall be liable to any civil or criminal proceedings, by reason of any matter or thing which he may have brought up or given notice of his intention to bring up, before the Assembly or any Committee thereof, by petition, Bill, resolution, motion, question or otherwise and notwithstanding such petition, resolution, motion, Bill, question or otherwise being disallowed or not being admitted by Mr. Speaker or by any other person duly entitled and to do so.

Freedom from Arrest in Civil Proceedings, etc.

5. No member of the Assembly shall be liable to arrest, detention or imprisonment in respect of any debt or any matter which may be subject of civil proceedings or under any civil process during the sessions of the Assembly and for two weeks before the beginning of a session and after the prorogation of the Assembly.

Personal Appearance in Civil Courts etc.

6. A member of the Assembly shall be exempt from personal appearance in any civil or revenue court during the sessions of the Assembly.

Information of Arrest in Criminal Charges

7. If any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, information of such arrest, detention, conviction or imprisonment together with the charges against such member shall forthwith be sent to Mr. Speaker by person or persons under whose authority or order the arrest, detention, conviction or imprisonment is effected.

Attendance of a Member if convicted

8. If Mr. Speaker, on information received as provided for in Section 7 of this Act or otherwise, is of opinion, and if he thinks necessary after consulting the wishes of the Assembly that the presence of a member, who has been arrested, detained, convicted or imprisoned is essential for the purposes of the proceedings of the Assembly or any Committee thereof, Mr. Speaker shall inform the Provincial Government accordingly and the Provincial Government shall take necessary steps forthwith to bring such member on such escort as they may consider necessary or in such other manner as they may deem necessary before Mr. Speaker and such member may attend such meeting of the Assembly or any Committee thereof as the case may be on such day or days as may be required by Mr. Speaker :

Provided further that the Provincial Government may take such steps as they may consider fit for the custody of the member during the time the presence of such member is not necessary in the Assembly or the Committee thereof.

Attendance of a Member detained or arrested on a Bailable Charge.

9. If any member of the Assembly is arrested or detained on any criminal charge and a court before whom any such case is pending against such member is duly informed by the member that he has been summoned to attend any session of the Assembly or any Committee thereof, such court shall, if the charge against such member is of a bailable offence, release such member on his personal cognizance or bail as the case may be, in sufficient time to enable him to attend the session of the Assembly or any Committee thereof as the case may be, provided that the provisions of this section shall not be applicable on the day or days which the court in usual course fixes for the trial of the case against such member.

Freedom of Movement

10. Every member of the Assembly shall have freedom of movement in his constituency or any other place within the Province for the purpose of discharge of his duties as member unless he is arrested, detained or imprisioned or otherwise dealt with on a criminal charge or in a criminal proceeding.

Members and Officers exempt from liability to serve as Jurors and Assessors.

11. Members of the Assembly and all officers and persons employed by the Assembly Department are exempt from liability to serve as jurors or assessors as provided in the Criminal Procedure Code.

Mr. Speaker exempted from Personal Appearance in Court

12. Mr. Speaker of the Assembly shall be exempt from personal appearance in court

Mr. Speaker exempted from Arrest, Detention, or Imprisonment.

13. Mr. Speaker of the Assembly shall be exempt from arrest, detention or imprisonment on a civil process, and shall not be liable to be arrested, detained or imprisoned in any criminal proceeding or trial, unless duly convicted in a court of law.

No Process to be served in the Assembly

14. No process, civil or criminal, shall be served within the precincts of the Assembly nor shall any such process be served through Mr. Speaker or any officer of the Assembly;

Provided that if such process is against any employee of the Assembly Department, it may be served within the precincts of the Assembly with the permission of Mr. Speaker, but not through him.

Non-Attachment of Salaries and Allowances

15. Salaries and allowances paid or payable to Mr. Speaker and Mr. Deputy Speaker, the Ministers and the Members of the Assembly under the provisions of the Government of India Act, 1935, shall not be liable to attachment and sale in execution of a decree, under the provisions of the Civil Procedure Code.

Non-liability for acts done by or under the Authority of the Assembly.

16. No person shall be liable to any civil or criminal proceeding for acts done in obedience to or by or under the authority of the Assembly and/or for acts done under the provisions of this Act.

No Action for removing or excluding Persons infringing Rules

17. No action, civil or criminal, shall lie against any person in removing or excluding by order or authority of Mr. Speaker or of the Assembly persons infringing the Rules or Standing Orders or otherwise behaving in an disorderly manner within the precincts of the Assembly.

Summoning Witnesses

18. (1) The Assembly or any Committee thereof may direct any person to attend before the Assembly or the Committee as the case may be and to produce any paper, book, record or document in the possession or under the control of such person.

Issue of Summons

(2) Any order to attend to or to produce documents, etc., shall be notified to the person by a summons under the hand of the Secretary to the Assembly under the orders of the Speaker or the Chairman of the Committee as the case may be ; and in every such summons there shall be stated the date, the time and the place where the person summoned is required to attend.

Service of Summons

(3) Such summons shall be served by the delivery thereof or leaving at the usual or the last known place of residence of the person concerned, through the District Magistrate within whose jurisdiction the said residence lies, who shall get it served by any person authorised by him in this behalf.

Travelling and Daily Allowances of Witnesses

(4) Any person so summoned to attend shall be entitled to receive from the Secretary to the Assembly Department such travelling and daily allowance as may be admissible under rules framed in this behalf by Mr. Speaker.

Oath

(5) The Assembly or any Committee thereof may require any such witness appearing before them to be examined upon an oath or affirmation and it shall thereupon be lawful for the Secretary of the Assembly or any person authorised by Mr. Speaker of the Assembly

or the Chairman of the Committee as the case may be to administer an oath or affirmation.

Refusal or Failure to appear

(6) Subject to the proviso of Section 71(4), or any other provision of the Government of India Act, 1935, if any person summoned to appear refuses or fails without reasonable cause, to appear or to produce on requisition any paper, book, record or document, as the case may be, which may be in his possession, power or control, he shall be punished with simple imprisonment which may extend to one year and with fine which may extend to one thousand rupees.

False Evidence

(7) Any person appearing as a witness, intentionally giving a false answer to any question or examination, shall be punished with simple imprisonment which may extend to two years and with fine which may extend to two thousand rupees.

Immunity of Witnesses

(8) Subject to the provisions of the Government of India Act, 1935, every witness so summoned and examined, shall answer fully and faithfully any questions put to him before the Assembly or any Committee thereof and shall not be liable in civil or criminal law for any such answer given or tendered by him and all proceedings arising thereof in any court shall be stayed on the production of a certificate signed by Mr. Speaker under seal of the Assembly that the witness was so required to answer or to produce.

Bribery

19. (1) Whoever being a member or an officer of the Assembly accepts any bribe to influence him in his conduct as such member or officer, or any fee, compensation, gift or reward for or in respect of any promotion, support or opposition to any Bill, resolution, question, matter or thing submitted to or intended to be submitted to the Assembly, or any money in relation to his duties as a member of the Assembly, other than what is paid or payable to him by virtue of the provisions of any law or rules framed thereunder, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to a fine which may extend to five thousand rupees.

(2) Whoever offers any such bribe or fee; compensation, gift, reward or money shall be punished with imprisonment for a term which may extend to two years and shall also be liable to a fine which may extend to two thousand rupees.

Disturbance in the precints of the Assembly

20. Whoever not being a member of the Assembly, creates any disturbance within the precincts of the Assembly, whereby the proceedings of the Assembly or of the Committee thereof are or are likely to be interrupted or obstructed shall be punished with simple imprisonment which may extend to six months or with fine or with both.

Publication by or under authority of the Assembly

21. Any publication of any report, paper, votes or proceedings by order of Mr. Speaker in connection with the Assembly or any Committee thereof shall be deemed to be duly published by or under the authority of the Assembly and no person shall be liable to any damages or to any proceedings in any court in respect of anything done in pursuance of such authority or order.

Faithful and correct report of proceedings

22. No Editor, Printer of Publisher of any newspaper or any person connected with editing, printing and publishing of such newspaper shall be liable in law on account of a faithful and correct report or a faithful and fair summary of the proceedings of the Assembly, provided that the provisions of this section shall not be applicable to any part of the proceedings publication whereof is prohibited by Mr. Speaker.

Obstructing officer and persons in the employ of the Assembly.

23. Any person obstructing in any manner an officer or any other person employed by the Assembly coming to the Assembly in the lawful discharge, or in the execution of his duties shall be punished with rigorous imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

Impersonating another for admission to the Assembly

24. Any person impersonating another person to whom a visitor's ticket may be issued under Rules and Standing Orders of the Assembly for admission to the Assembly Chamber or making a false statement or representation for getting a visitor's ticket, shall be punished with simple imprisonment which may extend to three months or with fine which may extend to Rs. 250 or with both.

Suspension or expulsion for grossly disgraceful, disreputable or heinous conduct.

25. Any member of the Assembly, who after due enquiry by the Committee of Privileges constituted under the Rules and Standing Orders of the Assembly, is found guilty of grossly disgraceful, disreputable or heinous conduct may be suspended from the service of the House or be expelled from the House, after a resolution is carried in the Assembly for such suspension or expulsion and for such term or period as may be specifically mentioned in the said resolution, and notwithstanding anything in this or any other Act, such member upon such expulsion or suspension, shall absent himself from the sittings of the Assembly or any Committee thereof and shall not be entitled to any of the privileges and powers of a member or to draw any salary, allowance or emoluments attached to his office as a member of the Assembly, for the period of suspension or expulsion, provided that the period of such expulsion or suspension shall not be deemed to be absence under section 68(4) of the Government of India Act of 1935.

Offence of contempt

26. Any person committing any of the following acts outside the Legislature shall be guilty of contempt of the Assembly and shall be punished with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both—

(a) Wilful misrepresentation of debates or proceedings of the Assembly.

(b) Publication of proceedings of a Select Committee or a Committee of the Assembly or publication of report of such a Committee, until such proceedings or report have been presented to the Assembly.

(c) Libellous reflections against the proceedings of the Assembly.

(d) Assault, insult, obstruction or menace to any member in his coming to or going from the Assembly or assault to any member upon the account of his votes or speeches in the Assembly or upon the account of his conduct or behaviour in the Assembly or force assault or threat of assault to compel any member to declare himself in favour of or against any question then pending or expected to be brought before the Assembly, otherwise than in the exercise of the free choice of such member.

(e) Reflections on the character or the conduct of Mr. Speaker or accusation of partiality in the discharge of his duties.

(f) Maliciously false or scandalous charges or imputations or libellous charges against a member of the Assembly touching his conduct as a member in the Assembly.

(g) Unduly influencing any witness in regard to any evidence to be given by him before the Assembly or any Committee thereof.

26B. Nothing in this Section shall debar any civil or criminal proceedings under any other law by any other person or persons.

Applicability of the Act to Committees

27. The provisions of this Act shall apply *mutatis mutandis* to any proceedings of any Committee of the Assembly.

No prosecution except on complaint of Mr. Speaker and stay of proceedings

28, No prosecution shall lie under the provisions of this Act except on the complaint in writing of the Secretary to the Assembly by authority of Mr. Speaker and signed under the seal of the Assembly and at any stage of the proceedings Mr. Speaker may, in pursuance of a resolution carried in the Assembly in any case under section 20 of this Act, and in any other case of his own motion report not to prosecute further and on receipt of such report all proceedings under the provisions of this Act in any court shall be stayed and deemed to be withdrawn.

Cognizance of an offence under the Act

29. (i) No court shall take cognizance of or shall try an offence under the provisions of this Act unless he is a Presidency Magistrate

or Magistrate of the First Class, provided that offences under section 26 (c), (e) and (g) shall be taken cognisance of and shall be triable only by the High Court and the court shall, upon any such complaint received, without any examination of the complainant or any other person, issue warrant with or without bail, as the court may deem necessary for the attendance of the accused and shall thereafter proceed with the trial according to law.

(ii) The Advocate-General of Bengal on the receipt of a report from the Secretary as authorised by Mr. Speaker in a case arising out of section 26 (c), (e) and (g) shall move the High Court and shall file the complaint as provided for in section 26 of this Act and the case shall thereafter be proceeded with subject to the provisions of this Act and the same procedure as followed in a case of contempt against the High Court shall be followed.

Judicial notice of the complaint

30. In any proceedings under this Act, the court shall take judicial notice of any complaint in writing or of any report as provided in this Act.

Privileges, Immunities and powers to be the general and public law

31. (1) All Privileges, Immunities and Powers of the Assembly or of the members under this Act or of the Government of India Act of 1935, shall be part of the general and public law of the province and it shall not be necessary to plead the same, but the same shall be judicially noticed in all courts.

(2) Whenever any question relating to such Privileges, Immunities or Powers or relating to any offence under this Act are in issue, the court shall take judicial notice of any proceedings of the Assembly published by or under authority of the Assembly in connection therewith.

Appointment of tribunal

(32) (i) Where it has been resolved by the Assembly that it is expedient that a tribunal be established for enquiring into a definite matter described in the Resolution as of urgent public importance, the Chief Justice of the High Court in pursuance of the Resolution shall appoint a tribunal consisting of not less than three Judges of the High Court, and in such case the tribunal shall have all such

powers, rights and privileges as are vested in the High Court for the purpose of enforcing the attendance of witnesses, examining them on oath, affirmation or otherwise, compelling the production of documents, subject to rules of court, the issuing of a commission or request to examine witnesses abroad, and a summons signed by one or more members of the tribunal may be substituted for and shall be equivalent to any formal process capable of being issued in any action for enforcing the attendance of witnesses and compelling the production of documents.

(ii) If any person—

(a) on being duly summoned as a witness before a tribunal makes default in attending ; or

(b) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer ; or

(c) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court ;

the chairman of the tribunal may certify the offence of that person under his hand to the High Court and the court may thereupon enquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment or that person in the like manner as if he had been guilty of contempt of the court.

(iii) A tribunal to which this Act is so applied as aforesaid—

(a) shall not refuse to allow the public to be present at any of the proceedings of the tribunal unless in the opinion of the tribunal, it is in the public interest expedient to do so for reasons connected with the subject-matter of the inquiry or the nature of the evidence to be given ; and

(b) shall have power to authorise the representation before them of any person appearing to them to be interested by counsel or solicitor or otherwise, or to refuse to allow such representation.

(iv) The findings and the report of the tribunal with certified copy of all evidence and of documents or with the original records of such evidence and documents, shall be sent by the tribunal to the Assembly.

Definition and meaning

33. (1) In this Act, unless it appears from the reference or context, words and terms shall have the same meaning and definition as in the Government of India Act, 1935.

(2) Subject to the provisions of this section and of this Act, words and terms shall have the same meaning as in the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act.

Trial of cases

34. Except as otherwise provided for and subject to the provisions of this Act, the provisions of the Criminal Procedure Code and of the Indian Evidence Act shall apply to all cases arising out of offences under this Act.

STATEMENT OF OBJECTS AND REASONS

Under Section 71 of the Government of India Act, every legislature has now the power to define its own privileges, with this restriction that it cannot function as a Court to punish any breach of privileges. The Bill, therefore, provides for the trial of all such breaches by the Courts.

In order that the legislative duties of a member may not be hampered in any way, the Bill provides that a member should not be liable to arrest, detention or imprisonment in any Civil proceedings or under any civil process during Assembly session and for a period of two weeks before and after and that he should be exempt from personal appearance in any civil or revenue court during sessions and should also be exempt from liability to serve as jurors or assessors.

The Government of India Act provides that a chamber of a Legislature may declare the seat of a member vacant, if he is absent without permission of the chamber of sixty days from all meetings. If a member is, therefore, detained, convicted or imprisoned on a

criminal charge or otherwise, compelling him to be absent from the sittings of the Assembly, it is necessary that the Assembly should have information of the fact and the Bill, therefore, makes necessary provision for such information being sent to the Assembly.

It is not intended that beyond sending such information there should be any interference with the administration of the criminal law, but so long a member remains a member of a legislature in which special interests apart from territorial representation, have been specially provided for, it is possible that a member's presence, even though he is under detention or imprisonment, may be necessary for the purpose of the Assembly and provision has, therefore, been made for bringing such member under proper escort before Mr. Speaker for such period as may be required for such special purposes and if considered necessary and desirable.

It has also been provided that a member accused of a bailable offence should be given bail to enable him to attend to his legislative duties except on days his trial may be fixed.

The Bill also provides for freedom of movement of a member within the province unless by virtue of the operation of the criminal law of the land, his movement is restricted in any manner.

The Bill provides that Mr. Speaker should be exempt from personal appearance in any court and unless convicted in due course of law should not be liable to be arrested, detained or imprisoned on any criminal process or in any criminal proceeding. This is obviously necessary so that the work of the legislature may not be disorganised or paralysed. Exemption of certain class of persons from personal appearance in criminal courts is not without precedence, in the law of this country.

The Bill provides that no civil or criminal process should be served within the Assembly House nor should such process be served through Mr. Speaker.

Salaries and allowances of members as also of Mr. Speaker and the Ministers are necessary emoluments for the proper functioning of the Legislature and the Bill, therefore, provides that they should not be liable to attachment or sale, in execution of a decree.

Provision has been made for the summoning of witnesses by the Assembly and detailed provisions have been made for this purpose. While witnesses are made immune from any civil or criminal

liability for their evidence any refusal to attend or giving of false evidence is made a penal offence.

In order that there may not be any doubt as to the legal liabilities of persons connected with the publications, by order of Mr. Speaker, of the Assembly papers, the Bill provides that no one should be liable in law for such publications.

Faithful and correct report of the proceedings of the Assembly or faithful and fair summary of reports in newspapers, are made immune from any liability in law.

The Bill provides for certain penal offences and for legislative contempts and makes provision for special procedure and special rules of evidence for such offences. It is intended that no such case should be taken cognisance of by any court except on the complaint of Mr. Speaker who is also given power to withdraw such cases. These offences include bribery and acceptance of money in relation to legislative works.

Following the procedure in England, provision has been made for the constitution of a tribunal of High Court Judges to investigate into matters of urgent public importance, if so desired by a resolution of the Assembly. Momentous matters are likely to arise from time to time and a judicial enquiry is always the best method for proper enquiry and investigations into such matters of public importance. The budget disclosures sometime back in England, were referred to a judicial tribunal of this nature. This Bill provides for exactly similar procedure in such circumstances.

Various other matters are also provided in the Bill arising out of privileges and for the proper functioning of the legislature.

Sd/- M. ASHRAF ALI,
Member-in-charge.

ANNEXURE III

Extracts from Constituent Assembly Debates re : Articles 105/194 (Draft Articles 85/169) of the Constitution

SHRI Alladi Krishnaswami Ayyar (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislatures in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and in the Colonies and it has been held that by reason of the wide wording in the Australia Commonwealth Act as well as in the Canadian Act, the Parliament in both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power ? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found it very difficult to formulate all the privileges unless they went in detail into the whole working of parliamentary institutions in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the

Speaker in regard to this matter. I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely no question of *infra dig*. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England ?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution." That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India. Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being *infra dig*, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore, there is no *infra dig* in the wording of clause (3). This practice has been followed in Australia, in Canada and in other Dominions with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore, we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be a badge of slavery, a badge of serfdom, if we say that the privileges shall be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the

British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain.

[*C.A. Debs. dt.* 19-5-1949, *pp.* 148-49].

The Honourable Dr. B. R. Ambedkar : I am mentioning the difficulty. If we were only concerned with these two things, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges which we speak of in relation to Parliament are much wider than the two privileges mentioned and which relate to individual members. The privileges of Parliament extend, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' powers and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters *e.g.*, to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

* * * * *

It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt

and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except for the sentimental objection to the reference to the House of Commons I cannot see that there is any substance on the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

(*C.A. Debs. dt.* 3-6-1949, *pp.* 582-83)

The Honourable Dr. B. R. Ambedkar : Sir, I might with permission inform my Friend Sidhva that since the time when the discussion took place I made a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy ; if he wants I can transmit it for his study. It might be possible later on for our own Parliament to embody the privileges.

* * * * *

Shri Mahavir Tyagi: Could we not leave this power to the Parliament itself to decide ?

Mr. President : That is exactly what the article says. The Parliament will define the powers and privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the Members to be vigilant.

(*C.A. Debs. dt.* 16th *Oct.* 1949, *pp.* 374-575).

ANNEXURE IV

Extracts from the Address of Speaker, Lok Sabha at the Conference of Presiding Officers in January, 1965.

THE Opinion of the Supreme Court on the President's Reference, as you are all aware, is not unanimous. The majority of the Judges, who constituted the Bench has, in effect, held that the powers and privileges conferred on Parliament and State Legislatures by Articles 105(3) and 194(3) of the Constitution respectively are subject to the fundamental rights and that even if the British House of Commons had, at the commencement of the Constitution of India, the privileges or power to commit for its contempt by a general warrant, the House of Parliament and Legislatures in India do not have the privilege or power that their general warrants must be held to be conclusive. Mr. Justice A. K Sarkar, in his minority Opinion, on the other hand, has held that "the right to commit for contempt by a general warrant with the consequent deprivation of jurisdiction of the courts of law to enquire into that committal is a privilege of the House of Commons" and that in view of the plain language of clause (3) of Article 194 of the Constitution "that privilege is possessed" by the Legislatures in India "when a House commits a person for contempt by a general warrant that person would have no right to approach the Courts nor can the Courts sit in judgment over such order of committal." Mr. Justice Sarkar also held that "when there is a conflict between a privilege conferred on a House by the second part of Article 194(3) and a fundamental right, that conflict has to be resolved by harmonising the two provisions. It would be wrong to say that the fundamental right must have precedence over the privilege simply because it is a fundamental right or for any other reason."

Be that as it may, for all practical purposes, the majority opinion is the Opinion of the Court and represents the interpretation of the Supreme Court on the relevant provisions of the Constitution.

Before the present Opinion of the Supreme Court, the position had seemed to be clearly established by the judgments of the Supreme Court in the Searchlight Case (AIR 1959 S. C. 395), of the Assam High Court in the Natun Assamiya's Case (AIR 1958 Assam

160), and of the Bombay High Court in the case of Homi Mistry *vs.* Nafisul Hasan (AIR 1957 Bom 218), that the privileges of the Legislatures were not subject to the fundamental rights. I may here recall only the following passage from the judgment of the Supreme Court in the *Searchlight* Case :

> "".....It is said that the conditions that prevailed in the dark days of British history, which led to the Houses of Parliament to claim their powers, privileges and immunities, do not now prevail either in the United Kingdom or in our country and that there is, therefore, no reason why we should adopt them in these democratic days. Our Constitution clearly provides that until Parliament or the State Legislature as the case may be, makes a law defining the powers, privileges and immunities of the House, its members and Committees. they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to remake it.....
>
> In the second place, the fact that clause (1) has been expressly made subject to the provisions of the Constitution but clauses (2) to (4) have not been stated to be so subject indicates that the Constitution makers did not intend clauses (2) to (4) to be subject to the provisions of the Constitution...It does not, however, follow that if the powers, privileges or immunities conferred by the latter part of those Articles are repugnant to the fundamental rights, they must also be void to the extent of such repugnancy. It must not be overlooked that the provisions of Art. 105(3) and Art. 194(3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III".

If you go to the history of the provisions contained in Articles 105 and 194 of the Constitution, you will find that the intention has all along been that the Legislatures in India should have the same powers and privileges as are enjoyed by the British House of Commons, more particularly the privilege of committing for contempt by a general warrant without the scrutiny of the Courts.

Soon after the first Central Assembly came into existence in 1921, the First Speakers' Conference presided over by Sir Frederick Whyte, a former member of the House of Commons, was held in the same year. At that time, Sir Frederick Whyte stated :

> "The whole question of 'privilege' in respect of the Legislatures in India was one of great importance..., the point being whether legal powers should be asked for to enable the Legislatures to punish contempts."

He further observed that since no privileges resembling those of the House of Commons had been statutorily conferred on Legislatures in India, they possessed no powers to punish contempts.

The matter was considered from time to time at the Conference of Speakers and ultimately in 1933, when the discussions on the Government of India Bill were taking place in the Parliament of the U.K., the Secretary of the Central Legislative Assembly was authorised by the Speakers' Conference to address a memorandum to the Clerk to the Joint Select Committee, House of Lords, London. Paragraph 4 of the memorandum stated as follows :

> "The unanimous opinion of the Conference of Speakers was that the future Legislatures, both Central and Provincial, in India must be given the privileges, immunities and powers enjoyed by the House of Commons... The Conference felt that in order to achieve this object, it was essential that a section on the lines of Section 18 of the British North America Act, 1867 as subsequently amended by the Parliament of Canada Act, 1875, should be incorporated in the Constitution of India... For the purpose of the exercise and safeguarding these privileges and immunities, the Legislatures, both Central and Provincial, should be made a Court of Record to enquire into and punish contraventions of the Act."

The British Parliament, however, did not accept the proposals as will be apparent by a reference to Sections 28 and 71 of the Government of India Act, 1935.

The question was again taken up at the Speakers' Conference in 1938 and Sir Abdur Rahim, President of the Legislative Assembly, addressed a memorandum on the subject to the Government of India to be forwarded to the authorities concerned. Paragraph 5 of this memorandum stated as follows :

"The Conference were unanimously and emphatically of opinion that the Government of India should be requested to take immediate steps to get Sections 28 and 71 of the Government of India Act, 1935, amended so as to secure for the Central and Provincial Legislatures and the officers and members thereof all the powers and privileges which are held and enjoyed by the Speaker and members of the British House of Commons."

The question was again considered at the Speakers' Conference in January 1947, but further action was postponed in view of the declaration of the British Government on 20th February, 1947 to grant independence to India.

Subsequently, at the instance of Shri G.V. Mavalankar, President of the Constituent Assembly (Legislative), as far as the Centre was concerned, Section 28 of the Government of India Act was amended by an Adaptation Order dated 31st March, 1948. As adapted, S. 28 (2) read as follows :

"In other respects, the privileges of members of the Dominion Legislature shall be such as may from time to time be defined by Act of the Dominion Legislature and, until so defined shall be such as were immediately before the establishment of the Dominion enjoyed by the Members of the House of Commons of the Parliament of the United Kingdom."

When the Speakers' Conference again met in 1950, Shri G.V. Mavalankar, as Chairman of the Conference, pointed out that a material change in the situation had been brought about by the enactment of the provisions of Articles 105 and 194 of the Constitution of India. These provisions placed the powers of Parliament and the State Legislatures on a completely equal footing with those of the House of Commons in the United Kingdom.

In his speech on these provisions in the Constituent Assembly, Dr. Ambedkar, who sponsored the constitutional provisions, stated as follows :

"Under the House of Commons Rules and Privileges, it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised, the jurisdiction of the court is ousted. That is an important privilege..... There is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to

unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate."

Now we might have a look into the Opinion of the Supreme Court. But before doing that we do need to have some introspection. A lot of patience and forbearance is needed to work the democratic institutions. All this unfortunate episode could have been avoided if the U.P. Legislature had exercised some restraint even when it believed, and quite rightly, that the High Court Bench at Lucknow had not exercised proper discretion in releasing Keshav Singh on bail. A chain of actions and reactions was set in, and what followed subsequently, has not brought credit to any side. I am glad Justice Sarkar put this whole affair in proper perspective. I cannot do better than quote his reference to this aspect, which he has done with beautiful clarity and balanced objectivity :

"Before I conclude, I must say that I feel extremely unhappy that the circumstances should have taken the turn that they did and that the reference to this Court by the President should have been rendered necessary. With a little more tact, restraint and consideration for others, the situation that has arisen could have been avoided. I feel no doubt that Beg and Sahgal, JJ, would have dismissed the petition of March 19, 1964 after they had possession of the full facts. I regret that instead of showing that restraint which the occasion called for, particularly as the order of imprisonment challenged was expressly stated to have been passed by a body of the status of the Assembly for contempt shown to it, a precipitate action was taken. No doubt there was not much time for waiting but Keshav Singh could not force the hands of the Court by coming at the last moment. The result of the order of the Hon'ble Judges was to interfere with a perfectly legitimate action of the Assembly in a case where interference was not justifiable and was certainly avoidable. On the other hand, the Assembly could have also avoided the crisis by practising restraint and not starting proceedings against the Judges at once. It might have kept in mind that the Judges had difficult duties to perform, that often they had to act on imperfect materials, and errors were, therefore, possible. It could have realised that when it placed the facts before the Judges, its point of view would have been appreciated and appropriate

orders made to undo what had been done in the absence of full materials. Such an action of the Assembly would have enhanced its stature and prestige and helped a harmontious working of the different organs of the State."

Circumstances conspired themselves in such a manner that the opinion of the Supreme Court regarding Reference by the President under Art. 143 of the Constitution on certain issues out of conflict between the High Court and Legislature of U.P. could be announced only three days before the Parliament had to adjourn on 3rd October, 1964. There was no time to have any discussion on the Opinion. But the inter-session period of about two months had been fully availed of by the parties interested and persons concerned with the result that the issues have been obscured and there is confusion. Symposia have been held, meetings convened and all this has created an impression that the Legislatures wanted to encroach upon the citizens' fundamental rights under the Constitution, and the Supreme Court, as special protector of these rights, had come to the rescue of the citizens. Further warnings have been sounded that if the Parliament amends the Constitution then it would be flouting the judiciary, which is supreme, and eroding the Fundamental Rights, which are inviolable except to the extent provided in the Constitution. The Press has played its own part, and its attitude can be understood and appreciated.

It is only the Legislatures that have not expressed any opinion so far. I congratulate the Legislatures on exercising this restraint Whenever there has been any reference to this Opinion inside any Legislature, be it a House of Parliament or a State, and whether the reference was during the Question Hour or during other debates, the indications have been clear that legislators are not united, but have emphasized different aspects. This gives me satisfaction that real democracy is working successfully in our country. Constitute a Legislature of 28 members, and let it discuss any resolution or motion. Various aspects would be considered and all opinions would be considered and all opinions would be expressed. In judiciary it has been possible for 28 Judges to converge from different parts of a State, and declare unanimous decision on a question that concerned themselves.

Almost three years have elapsed, and only two remain in the life of the present Parliament and State Legislatures and that too if any legislature is not dissolved earlier. There cannot be any certainty

about any of us being elected a member and then again chosen as a Presiding Officer. We have no inherited claims or vested interests. But, being in office, at the present time, when these issues have arisen, we do owe to ourselves, as well as to democracy and to our country some responsibilities to express ourselves how we feel about this opinion. We do believe that the dignity and independence of the judiciary is unquestionable.

We never claim that the legislatures are infalliable. We do not pretend that we are less fallible than the judiciary. We even yield to the claim that the Judges are less fallible than the politicians. But nothing is solved by these attitudes. The politicians have been known to make similar claims. The highest authority may err, but its decision is to be accepted because there is no remedy. Even in judiciary, when an appeal, review or revision is provided against a judgment, pleas have been taken, and in some cases decisions also recorded, holding that the judgment of a judge or a bench of judges, be they any number, is manifestly wrong or even absurd. The opinion of the Supreme body is correct because there is no higher authority to appeal to, and not because it is necessarily right. This correctness flows from finality, the finality is not the result of its correctness. If an appeal lay against this Opinion to any higher authority, it could be argued by lawyers, and even could be held by that authority that it was manifestly wrong in more than one respect. Honestly I believe that the opinion is wrong in some respects and many arguments harnessed to support it are untenable and irrelevant.

It has been argued that in England, Parliament is sovereign; in India the Constitution is supreme. Nobody denies that. The same is the case as regards Supreme Court. It is the Constitution that is supreme and not Supreme Court. It has to interpret the Constitution, and not to make it or rewrite it. If the words used in Art. 194(3) are clear and unambiguous then the ordinary meaning is to be given to the language used, and nothing extraneous can be imported into the Article according to the whims and fancies of the interpreter. The language in Art. 194(3) is very clear, and leaves no doubt for any speculation. To the Supreme Court Judges in Sharma's case (i) SCB 806) also the meaning was plain. This judgment contains, "In dealing with the effect of the provisions contained in Cl. (3) of Art. 194, whenever it appears that there is a conflict between the said provision and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the

rule of harmonious construction". This is unexceptionable. Similar attempts were made by the Supreme Court earlier, and even in the present Reference one has been made by Justice Sarkar, and the result has been harmony between the two wings, but the elaborate research by the majority now has created a conflict and disturbed harmony. In embarking upon this journey of making an attempt the Judges were at least conscious, that their destination was conflict for they entered a caveat "what would be the result of the adoption of such a rule (of harmonious construction) we need not stop to consider at this stage".

Now by their construction the majority Judges have come to the conclusion that an ordinary citizen (not a member) has a right to seek redress from any High Court or the Supreme Court against any punishment for a contempt of legislature committed outside the House. This means that a citizen has a fundamental right which can be protected by the Judiciary. Would he lose that right of recourse to courts for protection as soon as he is elected a member of a Legislature! How amusing would that be! The privilege had so far been understood to mean, and is even now understood to imply some special right that a person or group of persons enjoy over and above those enjoyed by all others. But if a legislator is not given the protection that any citizen enjoys, privilege would mean an inhibition, a restriction or a deprivation of some right that every citizen possesses. The Supreme Court has not given its Opinion about a member of the Legislature. But would it be possible to conceive that a member does not enjoy the same rights as an ordinary citizen? When this question is considered the result is inescapable.

Keshav Singh, in the present conflict, was to be administered a reprimand only for the contempt committed outside the House. He was ordered to be imprisoned for the contempt committed by him by his letter to the Speaker and by his behaviour "in view of the House". Justice Sarkar has given the facts thus :

> "He (Keshav Singh) was thereupon brought under the custody of the Marshal of the Assembly in execution of a warrant issued by the Speaker in that behalf and produced at the Bar of the House on March 14, 1964. He was asked his name by the Speaker repeatedly but he would not answer any question at all: He stood there with his back to the Speaker showing great disrespect to the House and would not turn round to face the Speaker though asked to do so. The reprimand having been

administered, the Speaker brought to the notice of the Assembly a letter dated March 11, 1964, written by Keshav Singh to him. ...The Assembly thereupon passed a resolution that 'Keshav Singh be sentenced to imprisonment for seven days for having written a letter worded in language which constitutes contempt of the House and his misbehaviour in view of the House."

From the facts it is manifestly clear that the sentence of imprisonment was awarded by the House for the objectionable letter by Keshav Singh to the Speaker and his contempt of the House inside the Chamber. As against this, the facts stated in the majority opinion do not disclose how Keshav Singh behaved inside the House. "The contempt and breach of privileges in question arose because of a pamphlet which was printed and published and which bore the signature of Keshav Singh alongwith the signature of other persons". The Opinion records "In pursuance of the decision taken by the House later on the same day, the Speaker directed that the said Keshav Singh be committed to prison for committing another contempt of the House by his conduct in the House when he was summoned to receive the aforesaid reprimand and for writing a disrespectful letter to the Speaker of the House itself". The actual behaviour of Keshav Singh turning his back towards the Speaker, and refusing to answer anything was not considered worth mention. But even from these facts it becomes clear that imprisonment was given for 'his conduct in the House' and the 'disrespectful letter to the Speaker'. The imprisonment was not awarded only for the contempt committed outside the Chamber. Yet the High Court interfered in this order, and released Keshav Singh on bail.

This is no argument that there was only one day left, and the petition would have become infructuous if Keshav Singh had served the last day also. If that had happened he was himself to blame for not having come earlier. What is the effect of this interim order by the High Court? The balance of sentence of imprisonment of one day has in effect been remitted, for on prorogation of a House, the balance of the period of imprisonment lapses automatically. The Supreme Court has not evidently considered this aspect when it has held that Courts can pass interim orders and even release persons committed for contempt on bail.

The Supreme Court jealously guards its own right to punish for its own contempt. In its own case there is no infringement of the Fundamental Rights and the citizen has no remedy. He has to

suffer silently even though he might feel that the order of punishment is not justified.

In Article 194(3) the same rights have been conferred on the Legislature, no less, no more. The Supreme Court has argued very laboriously that it is the right of the Superior courts alone to punish for their contempt, and the person punished has no remedy. This can imply that the Supreme Court is of the view that the Parliament and other legislatures must be reduced to the status of inferior courts. This Opinion concedes that legislatures have powers of courts to punish for contempt. If the Supreme Court had held that legislatures could not punish for their own contempts even, it could be understood. But to grant that they can punish for contempt, and thus can exercise the powers of courts, but only such restricted powers as are exercised by inferior courts, whose decisions on contempt are subject to review by higher courts, is to reduce by means of a laboured judgment the legislatures and the Parliament to the status of an inferior court subject to the jurisdiction of the Higher Courts and particularly the Supreme Court.

It would be interesting to note what Justice Sarkar has to say in this connection :

> "Our job is not to start an innovation as to privileges by our own researches. It would be unsafe to base these novel ideas on odd observations in the judgments in the English cases, torn out of their context and in disregard of purpose for which they were made ...To base our conclusion as to the privileges on researches into antiquities, will furthermore be an erroneous procedure for the question is what privileges of the House of Commons were recognized to be in 1950. Researches into the period when these privileges were taking shape can afford no answer to their contents and nature in 1950. The question can be answered only by ascertaining whether the right under discussion was treated as a privilege of the House of Commons by authoritative opinion in England in the years preceding 1950".

The authoritative opinion as to the privileges and powers of the House of Commons in England and Commonwealth Parliaments whose such privileges are identical is summed up by Lord Cairns, who delivered the Judgment of the Privy Council in the case of the *Speaker of the Legislative Assembly of Victoria* vs. *Hugh Glass*, as under :

"beyond all doubt one of the privileges—and one of the most important privileges of the House of Commons—is the privilege of committing for contempt, and incidental to that privilege, it has been well-established in England that the House of Commons have the right to be the judges themselves of what is contempt, and to commit for that contempt by a warrant, stating that the commitment is for contempt of the House generally, without specifying what the character of the contempt is.....Their Lordships consider that there is an essential difference between a privilege of committing for contempt such as would be enjoyed by an inferior Court, namely, privileges of first determining for itself what is contempt, then of stating the character of the contempt upon a warrant, and then of having that warrant subjected to review by some superior tribunal, and running the chance whether that superior tribunal will agree or disagree with the determination of the inferior Court, and the privilege of a body which determines for itself, without review, what is contempt and acting upon the determination commits for that contempt without specifying upon the warrant the character or the nature of contempt.....The ingredients of judging the contempt, and committing by a general warrant, are perhaps the most important ingredients in the privilleges which the House of Commons in this Country possesses; and it would be strange indeed if, under a power to transfer the whole of the privileges and powers of the House of Commons, that which would only be a part and a comparatively insignificant part, of this privilege and power transferred."

Mr. Seervai, while addressing the Maharashtra Assembly remarked "The majority opinion speaks of an objective approach, but does not show it. The minority opinion does not speak of it, but shows it". I entirely agree with this observation.

The language of Art. 194(3) was very plain to Sarkar J. and to all other Judges of the Supreme Court who had considered this Article earlier but it was not clear to the present majority delivering the opinion. On this point Sarkar J. observed : "I cannot imagine more plain language than this. The language can only have one meaning and that is that it was intended to confer on the State Legislatures the powers, privileges, and immunities which the 'House of Commons' in England had. There is no occasion here for astuteness

in denying words their plain meaning by professing allegiance to a supposed theory of division of powers "

This clinches the whole issue. There was no need to discuss in detail how and why the House of Commons got invested with these powers ; how conflicts arose, how they were resolved in England ; how the House of Commons fought these battles against the Stuarts; and how such enormous powers could be given to our legislatures or why should they be given at all when American Congress could do without them. These are all irrelevant discussions, and have only created confusion. Sarkar J. has well said in this connection: "It will not be profitable at all, and indeed I think it will be 'mischievous to enter upon a discussion of that dispute for it will only serve to make turbid, by raking up impurities which have settled down, a stream which has run clear now for years."

The majority opinion entered upon that discussion, and so the apprehensions of Sarkar J. has been confirmed.

Supposing indeed the language of Art. 194(3) was not so plain to the majority, as it was to Sarkar J. or to other Judges of the Supreme Court earlier, then the search for the intention of the Constitution-makers was bond to be undertaken. In this search the majority opinion has explored all possibilities of what the intention could have been, and even undertaken upon itself the responsibility to say what it should have been, but only omitted to quote what the framers of the Constitution themselves said their intention actually was. It is strange that the majority of Judges did not consider it worthwhile to mention in their opinion what was intended by Dr. Ambedkar and Sir Alladi Krishnaswamy Iyer when they transplanted Art. 194(3) from the Australian Constitution. The intention of the Constituent Assembly was to oust the jurisdiction of Courts in contempt cases.

This Opinion has raised so many controversial issues, and at certain places the arguments are so involved that one wonders what to say keeping in view the respect we must show to our Courts. The arguments could go on endlessly, but no useful purpose would be served by such futile exercise.

I am happy to say that the minority judgment has recognised that "during the fourteen years that the Constitution has been in operation, the Legislatures have not done anything to justify the view that they do not deserve to be trusted with power." The minority

view further says that "though Art. 211 is not enforceable, the Legislatures have shown an admirable spirit of restraint and have not even once in these years discussed the conduct of Judges. We must not lose faith in our people, we must not think that the Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction". I have no reason to believe that the Legislatures in this country will hereafter depart from this high tradition and the standards that have been achieved so far. If we have faith in democracy, we must entrust the chosen representatives of the people with the power necessary for them to conduct their affairs smoothly and in the best interest of the people and in accordance with Constitution.

I think I may also say a few words about the procedure that we have adopted in Lok Sabha in dealing with privilege cases. I believe this is also the procedure followed in all State Legislatures. No privilege matter can come before the House unless the Speaker gives his consent. This rules out the possibility of a matter being brought before the House in a state of excitement and under the impact of passions. The Speaker reviews the whole thing coolly when he gives his consent that the matter can be brought before the House. Privilege matters are, as a rule, referred to the Committee of Privileges on which the Minister of Law and the rich legal talent available in the House are represented. The Committee go into the facts and the law bearing on the matter thoroughly and frame a list of points that tell against the person who is alleged to be guilty of contempt or breach of privilege. The Committee ensures that they have before them the answer of the person concerned to all the points that are likely to be made against him There is, therefore, in our conventions and procedure full opportunity for the person concerned to present his case before the Committee.

The report of the Committee is then presented to the House and where it is proposed to take any action on the Report, the whole matter is debated in the House. As Lord Kilmuit, who was Lord High Chancellor of Great Britain pointed out "that in these debates it is as certain as anything can be that some member will raise any criticisms that can be made of the Committee's finding and that these will be present to the minds of the House before it comes to a final conclusion". I may emphasize that final decision in all privilege and contempt matters is taken by the House, and not by the Speaker or a Committee, after full investigation and after

giving all opportunities to the person against whom action is proposed to be taken to present his case. There are thus adequate safeguards and the rules of natural justice in the established procedure and no citizen need have any fear that his case will go unheard or that any action will be taken against him arbitrarily.

The crux of the whole thing is that we must express what we really want now, when this Opinion of the highest tribunal of the land is there. It may be an Opinion only. It may not be binding even. But then too we must show the utmost respect we can to our Judiciary. This Opinion has already corroded the privileges of the legislatures. Since that Opinion was announced there have been indications in the country that some people have felt encouraged to bring into contempt our Legislatures. We should never do anything which might in any way damage or impair the high esteem in which our Judiciary is held. We must try to enhance their prestige.

Now on the one hand there is the intention of the Constituent Assembly expressed, in unambiguous terms, by Dr. Ambedkar and Sir Alladi Krishnaswamy Iyer, and on the other hand, there is this Opinion, whereby the construction put by the Supreme Court has compelled us to concede that the original intention is not warranted by the words of Art. 194(3). The utmost respect we can show to the Judiciary would be by bowing to the superior wisdom of the Judges, however much we might differ from them, and accept that interpretation. When that is done, then we have a right to declare that we wish that the original intention may be given effect to by suitable expressions in Art. 194(3). We do not ask for anything new.

It must be borne in mind that the Constitution is a composite one whole and well-balanced structure. There are checks and balances prescribed in the Constitution itself. If any particular wing is impaired or damaged, the whole balance would be upset. There was purpose and well-considered design in assigning particular powers to each wing. The framers of the Constitution had studied and knew very well the privileges, powers and immunities of the members of the Congress in U.S.A. and of the House of Commons in the United Kingdom. Knowingly and deliberately these framers conferred the privileges of U.K. as the whole structure was conceived and based on Parliamentry democracy or British pattern. To suggest that American Congress privileges might be enough for our Legislatures is, to say

the least, simply fantastic. We are not asking for any favours from any one. No one can arrogate to himself the role of the King of England, the repository of all powers, who should consider what powers he is prepared to part with at a particular moment. We only desire that what was intended to be given by the Constitution-makers may be conceded as ours. If the language used in Art. 194(3) is inadequate to convey that intention, then that deficiency might be made up.

Resolution

This Conference of Presiding Officers of Legislative Bodies in India held at Bombay on the 11th and 12th January, 1965, having carefully considered in all its aspects the opinion of the Supreme Court on Special reference No. 1 of 1964 made by the President under article 143(1) of the Constitution regarding the powers and jurisdiction of the High Court and its Judges in relation to the State Legislature and its officers and regarding the powers, privileges and immunities of the said Legislature and its members in relation to the High Court and its Judges in the discharge of their duties, is of the confirmed opinion that—

(a) whereas it is not possible for Legislature to function successfully without their having the powers to adjudge in case of their own contempt, whether committed by a member or a stranger whether inside the chamber or outside it, and to punish that contempt without interference by Courts under any article of the Constitution or otherwise;

(b) whereas such ouster of jurisdiction of courts was intended by the Constitution makers as is clear from the statements of Dr. Ambedkar and Sir Alladi Krishnaswamy Iyer made in the Constituent Assembly when article 105 and 194 were adopted;

(c) whereas the language of these articles is so clear that according to Justice Sarkar the language can only have one meaning and that is that it was intended to confer on the Legislatures the powers, privileges and immunities which the House of Commons in England had at the commencement of the Constitution; and

(d) whereas the opinion of the Supreme Court has reduced Legislatures to the status of inferior Courts, and has impli-

cations that would deter the Legislatures from discharging their functions efficiently, honestly and with dignity.

Now therefore, this Conference considers that suitable amendments to articles 105 and 194 should be made in order to make the intention of the Constitution makers clear beyond doubt so that the powers, privileges and immunities of Legislatures, their members and Committees could not, in any case, be construed as being subject or subordinate to any other articles of the Constitution.

This Conference further authorises the Chairman of the Conference to take all steps necessary to give effect to this Resolution."

6

POWER OF LEGISLATURES TO COMMIT FOR CONTEMPT AND JURISDICTION OF COURTS*

THE committal to prison of Shri Keshav Singh by the Legislative Assembly of Uttar Pradesh for committing a breach of privilege and contempt of the House and his writ petition to the Lucknow Bench of the Allahabad High Court for setting him at liberty, led to a chain of events giving rise to "important and complicated questions of law regarding the powers and juridisction of the High Court and its Judges in relation to the State Legislature and its officers and regarding the powers, privileges and immunities of the State Legislature and its members in relation to the High Court and its Judges in the discharge of their duties". The questions of law involved were of such public importance and constitutional significance that the President considered it expedient to refer the matter to the Supreme Court for its opinion. The main point of contention was the power claimed by the Legislatures under Articles 105(3)/ 194(3) of the Constitution to commit a citizen for contempt by a general warrant with the consequent deprivation of the jurisdiction of the Courts of Law in respect of that committal.

Facts of the Case

On 7th March, 1963, the Legislative Assembly of Uttar Pradesh referred to its Committee of Privileges the complaint made by a member that Shri Keshav Singh and two others (all non-members) had committed a contempt of the House and a breach of privilege of a Member by having printed and distributed a leaflet containing false

*Published in *The Table*, Vol. XXXIII, 1964, pp. 24—36. 2392 (E) LS—1.—B—1.

and defamatory allegations against a Member in the discharge of his duties in the House. The Committee of Privileges held that a breach of privilege of a Member and a contempt of the House had been committed by the three persons concerned and recommended that they be reprimanded by the Speaker. The House agreed with the report of the Committee on 18th December, 1963, and the contemners were ordered to present themselves before the House to receive the reprimand on 4th February. On the said date they failed to turn up and it was ordered that they must appear before the House on 19th February, 1964. On that date, two of them put in their appearance and were reprimanded by the Speaker in the House. Shri Keshav Singh, who did not care to comply with the directions of the House, was summoned again to be present on 3rd March, 1964, but even on that date he did not present himself before the House. As it was obvious that Shri Keshav Singh was deliberately not appearing before the House, a warrant for his arrest and production before the House was ordered to be issued. In pursuance of the warrant of arrest, Shri Keshav Singh was arrested on 13th March, 1964. In the meantime, Shri Keshav Singh had sent a letter to the Speaker, dated 11th March, 1964, which was worded in language derogatory to the dignity of the House and the Speaker.

When Shri Keshav Singh was produced before the House on 14th March, 1964, he stood with his back towards the Speaker, showing great disrespect to the House and did not care to give any answer to the questions put to him by the Speaker. The Speaker, thereupon, reprimanded him in the name of the House in accordance with the resolution of the House dated 18th December, 1963.

A Member of the House then invited the attention of the Speaker to the disrespectful behaviour of Shri Keshav Singh and also to his letter referred to above. Thereupon, the Leader of the House (Chief Minister) moved the following resolution :

> That the way in which Shri Keshav Singh has behaved in the House and even prior thereto, the way in which he had been defying the directions of the House, amply indicate that Shri Keshav Singh was bent upon committing contempt of the House. As the said contempt has been committed in the actual view of the House, it is resolved that Shri Keshav Singh be sentenced to imprisonment for seven days and be lodged in the District Jail, Lucknow, to undergo the imprisonment and the Superintendent,

Lucknow Jail, be directed to keep Shri Keshav Singh in Jail as a prisoner of the House.

The above resolution was adopted by the House and Shri Keshav Singh was sent to the District Jail, Lucknow, for serving out the sentence of imprisonment.

On 19th March, 1964, Shri Keshav Singh, represented by Shri B. Solomon, Advocate, presented a petition to the Lucknow Bench of the Allahabad High Court under Section 491 of the Code of Criminal Procedure and under Article 226 of the Constitution, against the Speaker of the House, the House, the Chief Minister of Uttar Pradesh and the Superintendent of the District Jail, Lucknow, where Shri Keshav Singh was imprisoned, praying that he be set at liberty, on the ground, *inter alia*, that his detention after the reprimand had been adminstered to him, was illegal and without any authority and further praying that pending the disposal of his petition he be ordered to be released on bail.

The above petition was admitted by the High Court and Shri Keshav Singh was released on bail that very day pending disposal of the writ petition filed by him.

On 21st March, 1964, the Legislative Assembly of Uttar Pradesh adopted a resolution to the effect that the two Judges of the Allahabad High Court, who had entertained the petition of Shri Keshav Singh and ordered him to be released on bail, Shri B. Solomon, the advocate who had presented the petition to the High Court, and Shri Keshav Singh, had by their actions committed a contempt of the House. The Assembly ordered that Shri Keshav Singh be taken into custody to serve the remainder of his sentence and that the two Judges and Shri B. Solomon be taken into custody and brought before the House. Further, when the period of imprisonment of Shri Keshav Singh was completed he was ordered to be brought before the House for having again committed a contempt of the House on 19th March, 1964, by causing a petition to be presented to the High Court against his committal by the House.

The two Judges of the High Court thereupon presented petitions to the Allahabad High Court under Article 226 of the Constitution on 23rd March, 1964, praying for a writ of *mandamus* restraining the respondents thereto, namely, the Speaker, the House, the Marshal of the House and the Superintendent of Police, Lucknow, from implementing the aforesaid Resolution of the House dated 21st

March, 1964. Shri B. Solomon, Advocate, also presented a petition to the High Court under Article 226 of the Constitution for a similar writ of *mandamus* and further for taking action against the Speaker of the House and the House for contempt of Court

A full Bench of the Allahabad High Court, consisting of 28 Judges, admitted the petitions of the two judges on the same day and directed the issue of notices to the respondents and restraining the Speaker from issuing the warrant in pursuance of the Resolution of the House dated 21st March, 1964 and from securing execution of the warrant if already issued, and restraining the Government of Uttar Pradesh and the Marshal of the House from executing the said warrant, if issued.

Similar orders were made by the High Court on 25th March, 1964, on the petition of Shri B. Solomon, Advocate, for a writ of *mandamus*.

The order passed by the High Court was served on the Speaker on the morning of 24th March, 1964. But in the meanwhile, on the evening of 23rd March, 1964, the Speaker had issued the warrants of arrest pursuant to the Resolution passed by the Assembly on 21st March, 1964 and they had been handed over to the Marshal for executing the same. The Marshal was also served with the order of the Court but, before the service of the order, he had handed over the warrants to the Commissioner of Lucknow for execution.

On 25th March, the Legislative Assembly passed another Resolution declaring that by its earlier Resolution, dated 21st March, 1964, it had not intended to deprive the two Judges of the Lucknow Bench of Allahabad High Court, Shri B. Solomon, Advocate and Shri Keshav Singh, of an opportunity of giving their explanation before a final decision about the commission of contempt by them was taken by the House and directing that such an opportunity should be given to them.

The warrants of arrest of the two Judges and Shri B. Solomon, Advocate, were, accordingly, withdrawn by the Speaker, and the Resolution passed by the House on 25th March, 1964, was referred by him to the Committee of Privileges for necessary action. The Committee of Privileges decided on 26th March, 1964, to issue notices to the said two Judges and Shri B. Solomon, Advocate, to appear before it on 6th April, 1964, for submitting their explanations.

The two Judges, thereupon, moved fresh petitions before the High Court on 27th March, 1964, for staying the implementation of the Resolution passed by the Assembly on 25th March, 1964. A full Bench of the High Court consisting of 23 Judges passed an interim order restraining the Speaker, the House and the Chairman of the Committee of Privileges from implementing the aforesaid Resolution of the House and also the operation of the aforesaid notices issued to the two Judges by the Committee of Privileges.

Reference to Supreme Court

In the meantime, on 26th March, 1964, the President of India made a Special Reference (No. 1 of 1964) to the Supreme Court, in exercise of the powers conferred upon him by clause (I) of Article 143 of the Constitution of India, for consideration and report to him of its opinion in regard to the "serious conflict between a High Court and a State Legislature, involving important and complicated questions of law regarding the powers and jurisdiction of the High Court and its Judges in relation to the State Legislature and its officers and regarding the powers, privileges and immunities of the State Legislature and its members in relation to the High Court and its Judges in the discharge of their duties".

The following five questions of law were referred to the Supreme Court by the President for its consideration and opinion :

(1) Whether, on the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of the Hon'ble Mr. Justice N.U. Beg and the Hon'ble Mr. Justice G.D. Sahgal, to entertain and deal with the petition of Mr. Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Mr. Keshav Singh on bail pending the disposal of his said petition;

(2) Whether, on the facts and circumstances of the case, Mr. Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Mr. Keshav Singh on bail pending disposal of the said petition committed contempt of the Legislative Assembly of Uttar Pradesh ;

(3) Whether, on the facts and circumstances of the case, it was competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, before it in custody or to call for their explanation for its contempt;

(4) Whether, on the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon, Advocate. and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly: and

(5) Whether a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt or for infringement of its privileges and immunities or who passes any order on such petition commits contempt of the said Legislature and whether the said Legislature is competent to take proceedings against such a Judge in the exercise and enforcement of its powers. privileges and immunities.

Supreme Court's opinion[1]

A Constitution Bench of the Supreme Court consisting of seven Judges, presided over by the Chief Justice of India, Shri P. B. Gajendragadkar, considered the Reference made by the President. The proceedings before the Court were opened by the Attorney General of India who stated the relevant facts leading to the Reference and indicated broadly the rival contentions which the House and the High Court sought to raise before the Supreme Court by the statements of the case filed on their behalf. He was followed by the Counsel of the U.P. Legislative Assembly, Shri H.M. Seeravai (Advocate General of Maharashtra) and he was, in turn, followed by the Counsel of the Judges of the Allahabad High Court, Shri M.C. Setalwad (Ex-Attorney General of India).

The Supreme Court delivered its opinion on 30th September, 1964. The Majority Opinion delivered by the Chief Justice of

[1]A.I.R. 1965, S.C. 745.

India (for himself and five other judges) made the following points of constitutional and legal import.

(1) *Prima facie*, the power conferred on the High Court under Art. 226(1)[2] can, in a proper case, be exercised even against the legislature. If an application is made to the High Court for the issue of a writ of *habeas corpus*, it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House. Art. 226(1) read by itself, does not seem to permit such a plea to be raised. Art. 32[3] which deals with the power of this Court puts the matter on a still higher pedestal ; the right to move this Court by appropriate proceedings for the enforcement of the fundamental rights is itself a guaranteed fundamental right, and so, what we have said about Art. 226(1) is still more true about Art. 32(1).

(2) If a citizen moves the High Court on the ground that his fundamental right under Art. 21[4] has been contravened, the High Court would be entitled to examine his claim, and that itself would introduce some limitation on the extent of the powers claimed by the House in the present proceedings. . . Art. 212 (1)[5] seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is

[2]*Article* 226.—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

[3]*Article* 32 —(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

[4]*Article* 21 —No person shall be deprived of his life or personal liberty except according to procedure established by law.

[5]*Article* 212(1).—The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure

that the said proceedings suffer not from the irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular.

(3) The position is that the conduct of a Judge in relation to the discharge of his duties cannot legitimately be discussed inside the House, though if it is, no remedy lies in a court of law. But such conduct cannot be made the subject matter of any proceedings under the latter part of Art. 194(3)[6]. If this were not the true position, Art. 211[7] would amount to a meaningless declaration and that clearly could not have been the intention of the Constitution.

(4) The House, and indeed all the Legislative Assemblies in India, never discharged any judicial functions and their historical and constitutional background does not support the claim that they can be regarded as Courts of Record in any sense. If that be so, the very basis on which the English courts agreed to treat a general warrant issued by the House of Commons on the footing that it was a warrant issued by a superior Court of Record, is absent in the present case, and so, it would be unreasonable to contend that the relevant power to claim conclusive character for the general warrant which the House of Commons, by agreement, is deemed to possess, is vested in the House. On this view of the matter, the claim made by the House must be rejected.

Assuming, however, that the right claimed by the House can be treated as an integral part of the privileges of the House of Commons, the question to consider would be whether such a right has been conferred on the House by the latter part of Art. 194(3).

[6] *Article* 194(3).—In other respects, the powers, privileges and immunities of a House of Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

[7] *Article* 211.—No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

On this alternative hypothesis, it is necessary to consider whether this part of the privilege is consistent with the material provisions of our Constitution. We have already referred to Articles 32 and 226. Let us take Art. 32 because it emphatically brings out the significance of the fundamental right conferred on the citizens of India to move this Court if their fundamental rights are contravened either by the Legislature or the Executive. Now, Art. 32 makes no exception in regard to any encroachment at all, and it would appear illogical to contend that even if the right claimed by the House may contravene the fundamental rights of the citizen, the aggrieved citizen cannot successfully move this Court under Art. 32. To the absolute constitutional right conferred on the citizens by Art. 32 no exception can be made and no exception is intended to be made by the Constitution by reference to any power or privilege vesting in the Legislatures of the country . . .

The crux of the matter is the construction of the latter part of Art. 194(3), and in the light of the assistance which we must derive from the other relevant and material provisions of the Constitution, it is necessary to hold that the particular power claimed by the House that its general warrants must be held to be conclusive, cannot be deemed to be the subject-matter of the latter part of Art. 194(3).

(5) It may be conceded that in England it appears to be recognized that in regard to *habeas corpus* proceedings commenced against orders of commitment passed by the House of Commons on the ground of contempt, bail is not granted by courts. As a matter of course during the last century and more in such *habeas corpus* proceedings returns are made according to law by the House of Commons ,but "the general rule is that the parties who stand committed for contempt cannot be admitted to bail". But it is difficult to accept the argument that in India the position is exactly the same in this matter. If Art. 226 confers jurisdiction on the Court to deal with the validity of the order of commitment even though the commitment has been ordered by the House, how can it be said that the Court has no jurisdiction to make an interim order in such proceedings?

The Majority Opinion gave the following answers to the five questions referred to the Supreme Court by the President :

(1) On the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N. U. Beg and G. D. Sahgal, JJ., to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition.

(2) On the facts and circumstances of the case, Keshav Singh by causing the petitipn to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly of Uttar Pradesh.

(3) On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, before it in custody or to call for their explanation for its contempt.

(4) On the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly; and

(5) In rendering our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four walls of the legislative chamber. A Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its

contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature ; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities. In this answer, we have deliberately omitted reference to infringement of privileges and immunities of the House which may include privileges and immunities other than those with which we are concerned in the present Reference.

Mr. Justice Sarkar, in his Minority Opinion, *inter alia* made the following important points :

(1) The privilege which I take up first is the power to commit for contempt. It is not disputed that the House of Commons has this power....

The possession of this power by the House of Commons is therefore, undoubted ...

That takes me to the language used in cl. (3) of Art. 194. The words there appearing are "the powers, privileges and immunities of a House .. shall be those of the House of Commons". I cannot imagine more plain language than this. That language can only have one meaning and that is that it was intended to confer on the State Legislature the powers, privileges and immunities which the House of Commons in England had.

...It would, therefore, appear that Art. 194 (3) conferred on the Assembly the power to commit for contempt and it possessed that power.

(2) The next question is as to the privilege to commit by a general warrant. There is no dispute in England that if the House of Commons commits by a general warrant without stating the facts which constitute the contempt then the courts will not review that order : See *Burdett* v. *Abbott*; May, p. 173.

I find no authority to support the contention that the power to commit by a general warrant with the consequent deprivation of the jurisdiction of the courts of law in respect of that committal is something which the House of Commons had because it was a supeior court... I think in this

state of the authorities it would at least be hazardous to hold that the House of Commons was a Court of record. If it was not, it cannot be said to have possessed the power to commit for its contempt by a general warrant as a court of record...

I then come to the conclusion that the right to commit for contempt by a general warrant with the consequent deprivation of jurisdiction of the courts of law to enquire into that committal is a privilege of the House of Commons. That privilege is, in my view, for the reasons earlier stated, possessed by the Uttar Pradesh Assembly by reason of Art. 194(3) of the Constitution.

(3) In the present case the conflict is between the privilege of the House to commit a person for contempt without that committal being liable to be examined by a court of law and the personal liberty of a citizen guaranteed by Art. 21 and the right to move the courts in enforcement of that right under Art. 32 or Art. 226. If the right to move the courts in enforcement of the fundamental right is given precedence, the privilege which provides that if a House commits a person by a general warrant that committal would not be reviewed by courts of law, will lose all its effect and it would be as if that privilege had not been granted to a House by the second part of Art. 194(3). This, in my view, cannot be. That being so, it would follow that when a House commits a person for contempt by a general warrant that person would have no right to approach the courts nor can the courts sit in judgment over such order of committal.

(4) I wish to add that I am not one of those who feel that a Legislative Assembly cannot be trusted with an absolute power of committing for contempt. The Legislatures have by the Constitution been expressly entrusted with much more important things. During the fourteen years that the Constitution has been in operation, the Legislatures have not done anything to justify the view that they do not deserve to be trusted with power. I would point out that though Art. 211 is not enforceable the Legislatures have shown an admirable spirit of restraint and have not even once in all these years discussed the conduct of Judges. We

must not lose faith in our people, we must not think that Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction. Such correction may produce friction and cause more harm than good. In a modern State it is often necessary for the good of the country that parallel powers should exist in different authorities. It is not inevitable that such powers will clash. It would be defeatism to take the view that in our country men would not be available to work these powers smoothly and in the best interests of the people and without producing friction. I sincerely hope that what has happened will never happen again and our Constitution will be worked by the different organs of the State amicably, wisely, courageously and in the spirit in which the makers of the Constitution expected them to act.

Mr. Justice Sarkar, in his Minority Opinion, gave the following answers to the five questions referred to the Supreme Court by the President :

(1) This question should, in my opinion, be answered in the affirmative. The Lucknow Bench was certainly competent to deal with *habeas corpus* petitions generally...Till the Lucknow Bench was apprised of the fact that the detention complained of was under a general warrant, it had full competence to deal with the petition and make orders on it...

(2) The first thing I observe is that the question whether there is a contempt of the Assembly is for the Assembly to determine If that determination does not state the facts, courts of law cannot review the legality of it. Having made that observation, I proceed to deal with the question.

The question should be answered in the negative. I suppose for an act to amount to contempt, it has not only to be illegal but also wilfully illegal. Now in the present case it does not appear that any of the persons mentioned had any knowledge that the imprisonment was under a general warrant. That being so, I have no material to say that the presentation of the petition was an illegal act much less a wilfully illegal act. No contempt was, therefore, Committed by the Hon'ble Judges or B. Solomon or Keshav Singh for the respective parts taken by them in connection with the petition.

(3) .....For one thing, it would not be competent for the Assembly to find the Hon'ble Judges and B. Solomon to be guilty of contempt without giving them a hearing. Secondly, in the present case I have already shown that they were not so guilty. That being so, it was not competent for the Assembly to direct their production in custody.....

As to the competence of the Assembly to ask for explanation from the two Judges and B. Solomon, I think it had. That is one of the privileges of the House. As it has power to commit for contempt, it must have power to ascertain facts concerning contempt.

(4) I would answer the question in the affirmative. The Full Bench had before it petitions by the two Judges and B. Solomon complaining of the resolution of the Assembly finding them guilty of contempt. I have earlier stated that on the facts of this case, they cannot be said to have been so guilty. It would follow that the Full Bench had the power to pass the interim orders that it did.

(5) This is too general a question and is not capable of a single answer ; the answers would vary as the circumstances vary, and it is not possible to imagine all the sets of circumstances. Nor do I think we are called upon to do so. As learned advocates for the parties said, this question has to be answered on the facts of this case. On those facts the question has to be answered in the negative.

Speakers' Conference Resolution

The Opinion[8] of the Supreme Court was discussed by the Conference of Presiding Officers of Legislative Bodies in India held at Bombay on 11th and 12th January, 1965. Speaking at that Conference, the Chairman (Mr. Speaker Hukam Singh) said that "the intention on the Constituent Assembly was to oust the jurisdiction of Courts in contempt of cases". He observed :

If you go to the history of the provisions contained in Articles 105 and 194 of the Constitution, you will find that the intention has all along been that the Legislatures in India should have the same powers and privileges as are enjoyed by the British House of Commons, more particularly the privilege of commit-

[8]A.I.R. 1965 S.C. 745.

ting for contempt by a general warrant without the scrutiny of the Courts.

In his speech on these provisions in Constituent Assembly, Dr. Ambedkar, who sponsored the constitutional provisions, stated as follows :

"Under the House of Commons Powers and Privileges, it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised, the jurisdiction of the court is ousted. That is an important privilege...There is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentry institutions in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate."

The Presiding Officers' Conference adopted the following resolution unanimously :

(a) whereas it is not possible for Legislatures to function successfully without their having the powers to adjudge in case of their own contempt, whether committed by a member or a stranger whether inside the chamber or outside it, and to punish that contempt without interference by Courts under any article of the Constitution or otherwise;

(b) whereas such ouster of jurisdiction of courts was intended by the Constitution makers as is clear from the statements of Dr. Ambedkar and Sir Alladi Krishnaswamy Iyer made in the Constituent Assembly when articles 105 and 194 were adopted;

(c) whereas the language of these articles is so clear that according to Justice Sarkar the language can only have one meaning and that is that it was intended to confer on the Legislatures the powers, privileges and immunities which the House of Commons in England had at the commencement of the Constitution; and

(d) whereas the opinion of the Supreme Court has reduced Legislatures to the status of inferior Courts, and has implications that would deter the Legislatures from discharging their functions efficiently, honestly and with dignity.

Now, therefore, this Conference considers that suitable amendments to articles 105 and 194 should be made in order to make the intention of the Constitution makers clear beyond doubt so that the powers, privileges and immunities of Legislatures, their members and Committees could not, in any case, be construed as being subject or subordinate to any other articles of the Constitution.

This conference further authorises the Chairman of the Conference to take all steps necessary to give effect to this Resolution.

Allahabad High Court's Judgment

On 10th March, 1965, the Allahabad High Court delivered its judgment on the writ petition of Shri Keshav Singh which was pending before it since 19th March, 1964. The High Court dismissed the writ petition of Shri Keshav Singh and ordered him to surrender to his bail and serve out the remaining portion of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh.

In its judgment, the Allahabad High Court stated *inter alia* :

(1) In our opinion, both upon authority and upon a consideration of the relevant provisions of the Constitution, it must be held that the Legislative Assembly has, by virtue of Article 194(3), the same power to commit for its contempt as the House of Commons has.

(2) In our opinion, the provisions of Article 22(2) of the Contitution cannot apply to a detention in pursuance of a conviction and imposition of a sentence of imprisonment by a competent authority.....

.....Article 22(2) is applicable only at a stage when a person has been arrested and is accused of some offence or other act and it can have no application after such person has been adjudged guilty of the offence and is detained in pursuance of such adjudication.....

.....Article 22(2) was not intended to apply to a case of detention following conviction and sentence by the Legislative Assembly.

(3) So far as the question of violation of Article 21 is concerned,

the matter is concluded by the decision of the Supreme Court in *Sharma's Case*[9].....

Since we have already held that the Legislative Assembly has the power to commit the petitioner for its contempt and since the Legislative Assembly has framed rules for the procedure and conduct of its business under Article 208(1), the commitment and deprivation of the personal liberty of the petitioner cannot but be held to be according to the procedure laid down by law within the meaning of Article 21 of the Constitution.

(4) Once we come to the conclusion that the Legislative Assembly has the power and jurisdiction to commit for its contempt and to impose the sentence passed on the petitioner, we cannot go into the question of the correctness, propriety or legality of the commitment. This Court cannot, in a petition under Article 226 of the Constitution, sit in appeal over the decision of the Legislative Assembly committing the petitioner for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not.

(5) Since the House of Commons has the power to commit any one for its contempt and to confine him in one of Her Majesty's prisons, the Legislative Assembly also has a similar power to confine any person, whom it commits for breach of its privilege, in any prison Since the Legislative Assembly has, under Article 194(3), the Constitutional right to direct that the petitioner, who has been cammitted for its contempt, be detained in the District Jail, Lucknow, the Superintendent of that Jail was bound to receive the petitioner and to detain him in accordance with the warrant issued by the Speaker.

(6) In our opinion, no question of violation of Article 14 can at all arise in such a case. Every person, who commits contempt of the Legislative Assembly, is subject to the same procedure and to the same punishments.

[9]A.I.R. 1959 S.C. 395.

Shri Keshav Singh, was, accordingly, taken into custody subsequently, and he served[10] out the remaining portion (namely one day) of the sentence of imprisonment which had been imposed upon him earlier by the U.P. Legislative Assembly.

[10] *Statesmen*, dated 21st March, 1965.

7

ADMINISTRATIVE ACCOUNTABILITY TO PARLIAMENT*

In a modern Parliamentary system of government it is now accepted that one of the important functions of Parliament is to control the Executive. However, since this expression is used in a variety of different ways, it is advisable to specify what exactly is meant by the term. It can be used to mean a general political control in the sense that Parliament has a right to express its agreement or disagreement with the way the government intends to orient or has oriented its activities. In the second place parliamentary control which involves the detailed examination of government activities may cover both preliminary intervention, *i.e.*, before a policy is adopted, and *ex post facto* supervision, *i.e.*, after that policy has been implemented.

Parliaments derive their power to control the Executive from the Constitution or, as in the case of the United Kingdom, their long established custom, usage and convention. Nowadays this power of Parliament is taken for granted and one cannot conceive the efficient functioning of Parliament without it; but if we look back to the early days when parliamentary system was evolving, for instance in the United Kingdom, we find that Parliament had no such power to begin with and Parliament had to establish it, through control over taxation and expenditure, slowly over a period of centuries after a long struggle with the King.

The content and form of parliamentary control over the Executive vary from country to country depending upon the type of Constitu-

*Published in the Special number of *The Indian Journal of Public Administration*, on the "Tasks and Priorities in Administrative Reforms", Vol. XII, No. 3, July—September, 1966, pp. 356—377.

tion it has adopted. In a country which has accepted the theory of separation of powers, as in the United States of America, parliamentary control over the Executive is quite different from a country like India where Cabinet is responsible to Parliament. In the former case the Ministers have not to justify their policies before Parliament and they cannot be called to account on the floor of the House nor can they be dismissed by a vote of Parliament. But where the Ministers are responsible to Parliament and they depend for their continued existence as Ministers on the vote of Parliament, parliamentary control is direct and more exacting. Then again the complexion of the Houses of Parliaments has also a bearing on the matter. A two-party system, where the parties are more or less balanced, as in the United Kingdom, exercises a pull different from a system where, as in India, a single party is in a more dominating position and the Opposition is split into small groups with different ideologies and programmes. In the former case the Opposition has a reasonable chance of replacing the government and consequently it uses the parliamentary system in its continuous struggle to defeat it. In the latter case the main task of the Opposition is to hold the Government in check, to expose it ruthlessly and keep it on its toes. Side by side an internal system of checks and balances develops in the ruling party itself so that the Cabinet has to satisfy its own supporters as well about the aims of its policy and how it is carried out. Thus, these are some of the complexes which have to be remembered in this context and the conclusion that there is no uniformity is inevitable. It also follows that each Parliament has to evolve its own measures keeping in view the constitutional provisions, traditions, requirements and the will of the people in whose name Parliament acts and expresses itself.

It is not possible within the compass of this short article to describe the different systems of parliamentary control over the Executive in different countries or to compare one system with another. My intention is to describe the system as it exists in India today and to say briefly whether any improvements are necessary or desirable to strengthen it in the interest of the country.

Constitutionally and in practice Parliament and government in India are linked as partners in the conduct of public affairs by a whole network of relationships. An analysis of these relationships should make it possible to assess accurately the influence exerted by the one on the other. The first is the ministerial responsibility.

Under Article 75(3) of the Constitution of India, the Council of Ministers is collectively responsible to Lok Sabha. Although the Council of Ministers is appointed by the President, all Ministers have to be Members of Parliament and if a Minister is not a Member of Parliament at the time of his appointment, he has to be a Member within a period of six months, otherwise he would cease to be a Minister. The Council of Ministers may thus be called a grand committee of Parliament charged with heavy and onerous duties of conducting the executive affairs of the Government of India. It is this relationship primarily which determines the whole course of parliamentary control over the Evecutive. From this follows that the initiative vests in the Council of Ministers to bring forward legislative and financial proposals before Parliament and the role of Parliament is one of judging the opportuneness of the proposals, the validity of the factors on which they are based and their likelihood of achieving the objectives. The role of the Private Member is extremely limited. While he may bring forward a legislative proposal or a resolution on a policy matter, he has no chance of seeing it through unless the government agrees to it. It is, therefore, in very rare cases that bills sponsored by Private Members ever reach the Statute Book.

While the policy is in the stage of formulation, it is the government alone which considers it and gives it concrete shape Parliament comes into the picture only after the proposal is placed before Parliament for approval. Government has completely a free hand to implement the policy and Parliament has no right of inspection of the administration, which is responsible for carrying out the executive tasks assigned to them.

While the Council of Ministers and Parliament are closely interlinked, there is a clear distinction between the functions of the Executive and the functions of Parliament. Broadly speaking, the Executive has vast freedom in shaping policies and taking steps to implement those policies, and Parliament has the unlimited power to call for information and to verify *ex post facto* that the government and the administration have acted in conformity with their obligations and utilized the powers conferred upon them for the purposes for which they were intended.

The Executive employs a huge staff consisting of administrators, experts, technicians, scientists, specialists and ordinary workers to carry out the task assinged to it. With increase in the activities of

government in the field of economic and social well-being of the people, the responsibilities of government have greatly expanded and so have the staff working under the government increased manifold. Government machinery has become complex and too elaborate and the responsibility of the Council of Ministers has consequently increased. This has, in turn, led to the increase in parliamentary business. The administrative apparatus which the government employs to implement the task assigned to it also helps the Council of Ministers in the formulation of their policies which are eventually approved by Parliament. In fact before any proposal of government is placed before Parliament, it may have been suggested, examined or modified by the administrative machinery under the control of the Council of Ministers. Thus, the three organs—Parliament, Cabinet and the Administration—are constantly helping one another in the process of arriving at decisions. The Council of Ministers and the administration are no strangers to Parliament and the parliamentary supervision is not to be conceived as a supervision of an external on an outside authority. This relationship leaves in the hands of the Council of Ministers uncontrolled discretion in the whole executive field and limits the interference of Parliament in the day-to-day administration. This relationship also imposes an obligation on the Conncil of Ministers and the administration to be alive to Parliament's opinion, to anticipate its views and to be sensitive to its moods. Thus, though the Council of Ministers and Parliament are parts of one and the same body, a delicate balance between the two has to be maintained at all times and a sort of equilibrium based on mutual trust and respect brought about. Speaker Mavalankar, in the course of his Address to Conference of the Chairman of the Public Accounts Committees of all the Legislatures in India held in 1955 summed up the position thus :

> "Though the entire set-up for the Government of people is conceived as one whole for the benefit of the people and even though the division of work is also made with that purpose, it is yet unfortunately too true that the several parts of the administrative machinery have yet to go a long way before there could be perfect understanding and co-operation between the different constituent parts so as to make them as one indivisible whole in outlook, spirit and functions.....The Legislatures feel that the Executive governments are not properly respecting their wishes. The Executive feel that the Legislatures are interfering too much

and hindering their work by raising various issues, points and doubts.....That there should be this feeling of mutual inconvenience or irritation towards one another, by the various links of the administration as a whole, is undoubtedly an unfortunate situation.....We have, therefore, to make a conscious effort of getting over the situation by a proper appreciation and understanding of the purpose of the entire governmental set-up, the spirit that ought to pervade that set-up and the fact that all the links ought to go together to make one homegeneous whole."

Because the administration works intimately with the Council of Ministers and is in fact its tool for carrying out the policies of the government approved by Parliament, it is through the Council of Ministers that their accountability to Parliament is discharged. It is the Minister or the Council of Ministers who in the ultimate analysis has to take the blame for any failure, deficiency, delay, mistake or irregularity on the part of administration. Punishments may be light such as an expression of displeasure ar may be severe resulting in the dismissal of the Council of Ministers. Therefore, a heavy duty is cast on the administration to be careful, alert, watchful, honest and efficient and a heavy burden falls on the Council of Ministers to carry out detailed supervision of the administration and to be truthful to Parliament, for both of them will be judged by Parliament after the events have taken place.

As a first requisite to effective supervision of the Executive by Parliament it is necessary that complete and proper information on the activities of government is given to the Members. Parliament has a right to receive un-limited information, the only self-imposed restriction being that if divulging of certain information is prejudicial to the safety of the State it may not be given. Here again the discretion vests in the government and unless it is patently untenable the decision of the Minister is upheld.

It is the duty of the administration to feed Parliament with information and it is done by various ways. The most formal method, where the Members want information, is by asking questions in Parliament. Members can also informally write for information and this usually supplied either to the Member concerned or, if it is of general applicability, to all Members. The government also, of its own, feeds Parliament with information. The most formal method of giving information to Parliament is to place papers on the Table. This is, however, done under obligation cast on the administration

by Constitution or Act of Parliament, or resolution, convention or practice of the House. Such papers become immediately public and can be used to raise debates or discussions in the House. Therefore, administration has to take the utmost care in preparing and presenting these papers. Any delay in or incomplete or defective submission of these papers is severely criticized. Herbert Morrison in his book *Government and Parliament* (pages 322-323) describes a case of delay in laying a paper before Parliament and how he had to confess his guilt and sincerely apologise for the offence. He describes such offences as most serious and a sin against the rights of parliamentary democracy. The other less formal ways of giving information are by placing the papers in the Library of Parliament or circulating them to the Members. All these constitute a wealth of documentary information which a Member receives as a matter of course from the government. In addition Members have access to the Library of Parliament, which is well-equipped and which makes an effort to produce any paper that a member wants, provided it is available somewhere.

The function of administration lies in disseminating information regarding government activities in a concise form so that it is understood by Members of Parliament, in giving full facts and presenting them in an effective manner. If something goes wrong, the Minister and the department concerned are called upon to answer and to suffer the consequences.

The first hour of every sitting of Parliament is devoted to the asking and answering of questions. This is the most important hour. The administration is accountable to any or every Member of Parliament for what they have done or not done, or are doing and in some cases, propose to do. Not a single aspect of administration is left out and the whole administration is covered during a week or more accurately in five sittings of Parliament in a week. A piercing search-light is thrown in every nook and corner of the vast length and breadth of administration and nothing falls outside the scrutiny of Parliament. Although a question is asked to seek information but behind it may be the suggestion that things have gone wrong or administration has been remiss or there has been delay or the administrative action has not been consistent with the approved policy. The Minister may be put to a gruelling test by means of supplementary questions which may be so framed as to expose the weakness of administration. The questions also fulfil

another need. The Minister gets to know how his department is handling the affairs and what impact his department has produced on the mind of the general public, who no doubt, inspire questions through their representatives. One Finance Minister told me that he welcomed questions as they enabled him to know what was happening in his Ministry which otherwise he would not have known through the purified reports of his office. Every member considers this a valuable right and this is one of the surest and quickest ways of bringing administration to book for any lapse on their part. The impact of questions can be judged by the fact that in a session of six weeks as many as 15,000 questions may be asked in Lok Sabha, even when there is rationing of questions per Member. At present a Member cannot ask more than five questions, three of which may be for oral answers.

As a further follow-up of important matters which have not been cleared by the answer to a question, a member may demand half-an-hour discussion at the end of the day. Generally speaking such half-an-hour discussions are held frequently and they serve a useful purpose both from the point of full scrutiny by Parliament and from the view point of administration which has an opportunity to explain its case in more detail.

Answers to questions reveal at once how each department is functioning and its level of efficiency. To draft a parliamentary answer is an art. It must be precise, brief and accurate. It must reveal that administration has been prompt and that it has taken into consideration all aspects of the matter. The way the department or administration has briefed the Minister on the possible supplementaries also reflects the competence of the officers of the particular department. Thus the administration is on trial and they leave a mark both visible and invisible on the parliamentry scene. Even individual officers, though not mentioned by name, who have helped in the work of this sort behind the scenes seem to loom large before the parliamentary eye, and they create or destroy the image of administration both in parliamentary circle and outside. The departments which take this seriously, attend to their work with competence and earn a good name for themselves and above all for the Minister who is their mouthpiece and who can with the confidence of Parliament behind him give better directions and secure quicker approval of the policies of the department by Parliament. A good deal, therefore, depends upon the administration and this is

the first and everyday test which they have to pass through. This is one of the most effective ways in which concurrent and continuous parliamentary scrutiny over the administration is conducted.

The second but the most important scrutiny by Parliament concerns finances of the country. Government has complete freedom to suggest what the level of their expenditure should be and specify the purposes for which various amounts are required. They have also full freedom to suggest how revenue should be raised to meet the expenditure. The initiative is with the government alone. The power of the Cabinet in this regard is so full that seldom has Parliament varied the proposals except on pain of dismissal of the Cabinet. But after the government has submitted the budget and Parliament has voted the taxes and expenditure, the government has to conform to the last detail to the parliamentary sanctions. Administrative accountability in financial matters is so rigid that if any amounts have been spent in excess of the parliamentary sanctions, they may have to be made good by the individual officers who may have exceeded the powers conferred upon them, unless regularized by Parliament, and regularization by Parliament can take place only after full explanations have been submitted to it through its Committees, and the Committees have recommended it. Nevertheless, officers cannot escape departmental punishments of various types depending upon the seriousness of the irregularities committed. Administration comes under close scrutiny of Parliament when the budget is under discussion. Each Ministry, department, office and sub-office is on trial and it can be sanctioned money only after its activities during the year have been closely examined and discussed. There is no matter which cannot be raised during the debate. Questions of policy, economy, grievances, complaints, adequacy or inadequacy of projects, schemes and outlays can always be raised and the Minister has to give satisfaction before he may be let off

Although nearly two months of parliamentary sittings are devoted to these discussions, they are neither adequate nor detailed. In the nature of things, they cannot be. So Parliament conducts further scrutiny through three specialized committees of its own—Committee on Estimates, Public Accounts Committee and Committee on Public Undertakings. These Committees are vested with adequate powers to complete detailed examination of accounts without at the same time impinging upon day-to-day activities of the

administration. Through these committees the administration comes in direct contact with Parliament. It is the top officers of the administration who have to satisfy the committees that the amounts voted by Parliament are being or have been spent on the purposes for which they were sanctioned. They have to explain why irregularities have taken place, what action has been taken against the defaulting officers and how it is proposed to plug the loopholes for the future. They have also to satisfy the committees that all laws and rules governing the administrative and financial activities of the departments have been complied with ; the organization and the manning of jobs have been efficient ; the performance has been commensurate with expenditure involved and that all possible methods of ensuring economy consistent with efficiency have been tried. The examination by the committees is severe and the committees frown on shortcomings, lackadaisical attitude, and incompetence of the administration, and they do not let off the guilty easily. The committees perform very useful functions. They keep the administration on their toes and more than bringing out the flaws, they are instrumental in inspiring reverence for parliamentary control among all the sections of administration so that much misuse of money and administrative powers and faults of like nature are prevented. Reports of committees are treated with respect. Each recommendation is carefully analyzed and processed and administration makes an effort to give a better account of itself next time. It is also important to note that the committees have earned a name for themselves because they have avoided certain things, such as, they do not interfere in the day-to-day activities, they do not concern themselves with individual appointments, promotions, transfers ; they do not ask for names, except in rare cases, of officers who are at fault ; they do not make investigations themselves and come to judgment as to the punishments ; they do not go into details of labour-management disputes, adequacy of individual wages and so on. This has helped the committees to keep to essentials and fulfil the broad parliamentary scrutiny which is not to substitute Parliament for government but to energize the administration and to encourage it to generate confidence in itself.

In this connection the role of the Comptroller and Auditor General is to be carefully noted. He is an independent authority created under the Constitution and his funticons and duties are defined therein. He is required to conduct an independent audit of all

government transactions and to make his report to Parlia ment through the President. His reports form a very valuable material on which the Public Accounts Committee works. But for the independent audit by the Comptroller & Auditor General it would have been difficult for the parliamentary committee to gather cases of fraud, financial irregularities, mis-appropriations, excess of expenditure over grants and so on. So in the scheme of parliamentary scrutiny of the administration, the part played by the Comptroller & Auditor General is vital and he makes the task of Parliament and Public Accounts Committee easier in pin-pointing the faults of administration.

Apart from the financial committees of Parliament there are other scrutiny committees to whom the administration is answerable. They are (1) Committee on Government Assurances, (2) Committee of Subordinate Legislation, and (3) Committee on Petitions.

The Committee on Government Assurances scrutinizes whether assurances, undertakings and promises given by Ministers on the floor of the House have been implemented within time. The Committee makes comments on delays in implementing the assurances and also on the inadequacy of the action taken. Officers or government are answerable to the committee and they have to satisfy the committee that the delay was inevitable and where they are at fault they have to make apology to the Committee and to the House. The Committee fulfils the need for watching the follow-up action and the government department have to be mindful that the undertakings given by their Ministers are fulfilled. The Committee goes through every assurance and undertakes detailed examination so that the departments cannot easily ignore the proceedings in Parliament.

The Committee on Subordinate Legislation is designed to verify that Government does not exceed the powers of legislation by rule-making conferred on it by Parliament. Generally all major provisions are embodied in the Act and government is given powers to make rules to fulfil the purposes of the Act. These subsidiary and ancillary matters become part of the law. In sum, government's power to make rules is enormous. If this power is not properly checked by Parliament there is danger that government might gradually usurp the legislative powers of Parliament, or that the rules might go beyond the rule-making powers of government conferred on them. Usually two safeguards are provided. One is that the rules should be placed before Parliament as they are made or in some

cases in draft form before they are promulgated. The idea is to give Parliament an opportunity to discuss the merits of the rules and to enable them to recommend that a particular rule may be annulled or modified. The other safeguard is that the Committee on Subordinate Legislation verifies in each case that the rule is within the framework of the Act and it does not attempt to bring in a substantive matter. This Committee further verifies that the rules have been laid on the Table at the earliest opportunity and have been laid for the specified period. These safeguards ensure that the legislative powers of Parliament are not diluted and the executive is not accused of the "new despotism". Almost all matters of difference between the committee and the government are resolved by discussion and ultimately by conceding to the committee the superior role and accepting its advice. Rarely are such matters referred to Parliament for decision. Administration has to be responsive and has always to keep in mind the possible reactions of Parliament and the Committee when drafting a rule. The preventive influence of Parliament and the committee on the administration in this respect is equally important and government is careful to avoid repetition of the same mistake.

The Committee on Petitions is unique in the sense that it serves as a link between the aggrieved citizen, administration and Parliament Any citizen, who feels that he has a grievance against the administration which has not been redressed through other channels, can approach Parliament direct. If his grievance or suggestion affects a matter of public importance, his petition is received by Parliament and sent to the Committee for examination and report. In case the grievance is personal or individual in character, it is directly sent to the committee who looks into it. The committee may call upon the concerned department of government to furnish the facts about the case and may hear the individual and the representative of the administration before coming to its conclusion. Whatever be its recommendations the administration has to give proper consideration to the matter. Administrative accountability to Parliament thus brings in its fold administrative responses to the demands and grievances of citizens, and the committee's reactions thereto act as a soothing balm to the citizens and vindicate the right approach of the administration as the case may be.

I have described the methods whereby Parliament has instituted elaborate procedure to secure detailed administrative accountability.

But Parliament has summary methods also. They are more in the nature of political control over the Executive. First on the list of these summary methods is the Short Notice Question. Where the news is disquieting, Parliament likes to be informed immediately of the facts. Of course, a Short Notice Question can be answered with the concurrence of the Executive and neither the Speaker nor Parliament has any means to compel the Minister to do so. In its own interest, however, the Executive feels bound to accept a Short Notice Question provided it has the information available or can get it quickly from its field offices. If the matter is urgent and of sfficient public importance, a Member can call the attention of the Minister to it and ask him to make a statement. Here the Minister has no choice except to ask for time to make a statement. Both the Member and the government are at the mercy of the Speaker whose decision whether a statement should be made or not is final. Both these procedures are available to Members who are interested in the matter and they are not subject to discussion or vote in the House. There may be implied criticism of the administration if things are not satisfactory, but this does not crystallize into any concrete censure or definite opinion of the House.

There is an important difference between the procedures described above and those which will be stated hereafter. In the former case, it is all the Members of the House, whether individually or collectively, irrespective of their party affiliations, who are interested in the scrutiny of administrative and executive acts and express themselves on the merits of the case without inhibition; but in the latter case the issue is between the Opposition and the Government Party and thus it assumes a political character. In the nature of things, such motions or matters are raised by the Members of the Opposition only. As the vote of the House is involved and the continued existence of the government is threatened, the supporters of government have to take the government line regardless of what their innermost feelings are and they have to exhibit combined strength on the floor of the House to defeat the Opposition. How the supporters of government sort out the difference among themselves is a separate story which will be described later. Administrative accountability via these processes is remote and indirect and gets blurred with political responsibility and philosophy of the party in power.

Whenever a member is inclined to press a matter to a conclusion and wants to censure the government, he has a potent weapon in his hands in the shape of adjournment motion. The rules relating to adjournment motions are strict and the members who give such a notice hav eto cross many hurdles. The matter must be definite, of sufficient public importance, of recent occurrence, must attract the central responsibility, involve failure of government and the facts must be agreed to by government and above all it must have the support of fifty members. The discussion usually lasts for not more than 2½ hours and in any case is to be concluded that day. It is because of these restrictions that it is rarely that a motion passes all the tests. All these factors have combined to give this method of exercising control over the Executive so much importance and prestige.

Then there are motions to disapprove a particular policy or act of government. This may also involve political consideration or may be designed to call in question some administrative or executive act. In the latter case, the Minister has to defend the administration or take the blame for it. These motions are also in the nature of censure and have to be defended to save the life and prestige of the government.

The most important constitutional right in the hands of a member is to move a vote of no-confidence in the Council of Ministers, The only self-imposed restriction is that fifty members should support the motion. Members have not to give any reasons for moving the motion; there is no time limit for giving such a notice; no permission of any body to move it is required. Once such a motion is admitted, government has to find time early enough to have it debated. As the recent events in Lok Sabha have shown, the House has successfully established the right that until the "no-confidence motion" is disposed of, no substantive motion involving the approval of government policy should be admitted and debated in the House. During the debate on the motion of no-confidence, Members are at liberty to call in question any policy or act of government. They may list any or all the faults of government. The debate takes place for a reasonable duration of time in order to enable all the opposition viewpoints to be stated. Government's supporters have to defend the government and most Ministers whose policies or departmental acts are criticised take part in the debate. The Prime Minister winds up the debate on behalf of government.

It is primarily the government which has to struggle for its survival and the administrative apparatus is not directly affected, but since the administration is inextricably connected with the government they have to supply material, facts and data to the government and strengthen the government's case in order to enable them to defend themselves and the administration. The government is not alone in this. They have the support of their party and may also get support from other opposition elements who are in agreement with their policy. Thus the division is along the party or political lines. Though on such a motion the result of the vote is usually a foregone conclusion, the government has to show its ability on its own merits that it is pursuing the right policy and that it has implemented its policy reasonably satisfactorily. Much depends on the administrative machinery as to how they have served the government and how they have supplied the facts and arguments in support of government's case. The administration is therefore on a severe test at such a time, and its collective accountability through the government of the day is in no doubt, for a single fault in any part of the administration may damage the prestige of government and may even bring about its fall.

I have so far described how parliamentry scrutiny *ex post facto* is conducted and this is an important aspect of the parliamentary control over Executive. Parliament has also the power to participate in the decision-making process in order to lay down the limits within which government can act. Of course, as has been explained earlier. it is at the instance of the Executive that parliamentry policy is evolved and given final shape, and because of the intimate relationship between the government and Parliament, it is the government's policy, with some minor changes here and there, which is finally approved by Parliament. But in so doing Parliament has tremendous scope to influence the Executive. This may be called the advisory role of Parliament. During dabate and discussion on legislative proposals or Financial Bills, motions to consider and approve government policies, members are free to express themselves and to say what is good for the country and what modifications of the existing policy are required. Government is sensitive to parliamentary opinion; in most cases they anticipate it; in some cases they bow to it and in some others they may feel that they cannot make any change consistent with their commitments and obligations and political philosphy. Novertheless during discussions

members have full liberty to criticize the administration for their past performance and suggest how they should behave in the future or how a particular measure should be carried out or implemented. These discussions are important for they indicate parliamentary mood and bring the impact of public thinking on the administrative apparatus which may otherwise remain immune to public sentiments and feelings. Administrative accountability arises from administrative responsibility and it is as well that the parliamentary debates should serve to remind the administration of their duties and obligations. Parliamentary debates affect the administrative thinking and action in a variety of ways and that subtle influence which cannot be measured in terms of any visible units pervades through all the ranks of administration—high and low. Administrative responsiblity which is vital to any administrative accountability is thus laid down in these parliamentary discussions and after Parliament approves the policies, administration has complete freedom to implement them in the best manner possible but they are nevertheless haunted and guided by the various viewpoints expressed on the floor of the House. Therefore, a duty is cast on the administration to study the parliamentary opinion carefully and to weave it in its executive and administrative instructions so that when it comes to its accountability afterwards, they give a good account of themselves.

I have so far described the parliamentry control over the executive on the floor of the House, or through parliamentary committees; but there are two other organs, *viz.*, the deliberations inside the ruling party and the press, whose role is obvious and well-known, but is not recognized in any formal scheme of the term "control over the executive". I shall briefly state how these two constitute an important element when questions of administrative accountability to Parliament are considered. I have explained that when parliamentary opinion divides itself on party or political lines, the party in power has to support the government, but this does not mean that they are immune to public opinion or to the reasonabe demands of the opposition or that they themselves have nothing to say against the administration. Far from it, their forum is, however, not the floor of the House but their internal meetings of the party or its executive. The Congress Party in this respect is not rigid. It is flexible enough to accommodate different points of view. It gives scope for every opinion and criticism to develop and it holds frequent discussions or consulation, the gists of which are often

given out in the public. This characteristic of the functioning of the party has enabled it to hold its position in the House. It is the discussions and developments in its own party meetings which influence the government more in shaping its policies or responding to public opinion. Its impact on the administration is no less important than the impact of Parliament. Though the administration is not directly accountable to the party in power, but indirectly the criticism it suffers at the party hands reflects itself on the floor of the House and gets channellized into different parliamentary procedures by which the administration is called to account.

The other is the role of the Press. In India today the Press plays an important part in parliamentary life. It is through the Press that Parliament enjoys so much prestige in the public eye and it is with the help of the Press that Parliament is able to control the Executive effectively. The Press is rightly called "an extension of Parliament." It is the Press which struggles hard to unearth the administrative lapses, scandals and shortcomings, gives expression to public grievances and difficulties and reports on how policies are being carried out. Most of the raw material for parliamentary questions, motions and debates comes from the daily Press and this is an important instrument on which a member relies. Simultaneously the Press keeps the public informed of what is happening in Parliament to the utmost detail. This two-way traffic enables the Press to maintain an important and strong link between the Public and the Parliament. Considering the space that is devoted to these matters and the volume of information, which is of use to Members of Parliament, that is given, it is remarkable how the Press in our country fulfils a great need felt alike by the Members of Parliament and the public. By and large the daily Press is objective and truthful and this is its strength to be of educative value. Therefore, in the scheme of administrative accountability, the Press has an important place. The administration is always afraid of the Press more than Parliament. If the Press gets to know anything about the administration, it is not prevented by any rules and regulations, save those of decency and fairplay which too are self-imposed, from publishing it at the earliest possible opportunity. Though the Press itself has no legal power to do anything against the administration, it sets up waves which kindle public opinion and ultimately lead to Parliamentary action. The Press, therefore, acts as a great check on administrative excesses, bungling and lethargy, and it is this influence of the Press in the

background of ultimate parliamentary exposure which is more important of bad administrative acts which in the aggregate may not be many.

This then is how Parliament exercises its control functions over the Executive and the administration. But is the system complete or perfect ? In theory, it is. In practice, however, there is scope for improvement whithin the existing set-up.

In order that parliamentary control over the Executive may be more effective and the administrative accountability may be more precise it is necessary that all policies laid down by Parliament should be stated in specific terms. At present government motions on policy matters are vague and too general. Parliament has never defined what our international policy is or should be. Parliament has debated it every session, expressed its views, bnt no resolution specifying in detail our relationship with other Nations has been passed. What they have always approved is government policy in regard thereto. The policy is, therefore, to be gathered from various speeches of Ministers from time to time. Speeches can never be precise. They are arguments, facts, opinions, intentions—all put together. No administration can be effectively called upon to accouut on this basis. It will always find an escape route in the speeches for what it has done or has failed to do. Similarly other government policies such as economic, defence, agricultural or food policies are so generally stated in the course of speeches that requires a third party to state precisely what has been approved. Parliament should never encourage omnibus motions such as "such and such policy or situation be taken into consideration and having considered it, the policy of government in regard thereto is approved." What is passed by Parliament is this motion alone and not the government speeches which have been made during the course of the debate. It is because of the imprecise wording of the Government resolutions that Parliament has been ineffective in enforcing what it wants and what it thinks it has accepted. Hence I must say to the credit of private members that their substitute motions or amendments are precisely worded and spell out their intentions clearly. It is in the interest of government, adminstration and the country that government resolutions, which are designed to seek the approval of Parliament, should be precisely worded and should state specifically what is intended to achieve. An instance of some of government resolutions which are specific is resolution on industrial policy or payment

of dividends by the railways to the general revenue. It should also be borne in mind that government policies in regard to various matters are apt to change from time to time depending upon the conditions prevailing. It is imperative that administration should have the approval to what is proposed to be done at the time with the necessary flexibility to manoeuvre within the specified limits during short periods.

At present through the legacy of what was being done before the Constitution came into force, a number of important matters which should under the provision of the Constitution, be the subject of Parliamentary law, are settled by the administration and the Executive under its powers in its discretion. This is vitiating the parliamentary control to a large extent. This is also causing a lot of friction between Parliament and the Government. For instance, motions relating to pay, pensions and terms of service of government servants and armed forces should be settled after parliamentary approval, as is done in most advanced countries. Similarly the limits and conditions of government borrowing and expansion of currency should be laid down by Parliament. But this is not being done. This keeps a large area of governmental activities which should, properly speaking, be within the ambit of specific parliamentary approval, out of parliamentary scrutiny. Another example of dilution of Parliamentary control may be cited. Government makes frequent changes in the Constitution, abolishing, merging and separation of ministries and departments without consulting parliamentary opinion. The organization of government machinery has an important bearing on parliamentary control and proper functioning of administration. Much of the criticism to which the organisation of Planning Commission has been subjected to, both in Parliament and outside, would have been avoided if its constitution, functions and relations with the Executive and Parliament had been laid down with parliamentary approval. This Estimates Committee had recommended this course many years ago.

Arising out of this blurring of government and parliamentary functions, there is much confusion about the question of examination of policy matters by the Committees of Parliament. No one would say that a parliamentary committee can question a policy laid down by Parliament. The committees have never claimed or done it. They know that they are the instruments of Parliament and they consciously avoid it. But what they examine and question is the

government policies. It may be that a policy which should have been laid down by Parliament is actually laid down by government and because of the fact that government is responsible for the policy, the committees go into it, may criticize it and advocate an alternative policy. Much of this could be avoided if administration and executive were alive to the parliamentary prerogative in this aspect, and strengthen their hands by obtaining approval to such policies.

The great advance in science and technology and the socio-political forces released in their wake, the emergence of the concept of the planning and the welfare state, have all tended to add steadily to the range and scope of governmental responsibilities, and, correspondingly, of governmental activities at the present time. In practical terms this sudden growth of complexity in state activity has meant a vast expansion in administrative machinery—more departments, more officers, multiplication of rules, oders and regulations—and new forms of organizational set-up. Administrative satellites under various names, such as boards, corporations, government companies and the like have been thrown up on the scene. So complex has grown the nature of its responsibilities that the Executive in the performance of its duties has now come to exercise functions even of a judicial or legislative character. The range and magnitude of governmental activities in the present day has led Parliament to shift its emphasis from its law-making activities to oversight of administration, but Parliament as a body is not a fit instrument to undertake it itself. It cannot use the floor time for details nor it has enough time to do it. Therefore, it has to devise other methods. Obviously it has to rely on its committees to carry out the task.

Apart from the obvious advantage of saving floor time and rescuing the House from detail, the very complexity and technical nature of modern business makes it necessary that governmental activities should be closely scrutinised in a business-like manner, availing of outside technical or expert advice, wherever necessary. It is essential that committee system should be developed on an extensive scale. The committees should be patterned after the Ministries or the Departments of the government or subject-wise or in such manner as may be convenient. The committees, composed of members of various parties, tend somewhat to cool down party spirit, promote a strong corporate sense and help consideration of

questions on their merits rather than on party lines. They also tend to promote an element of specialisation among members. Such committees can usefully examine how the departments have shown their performance within the resources available to them.

A question may be raised in this connection that there are already Informal Consultative Committees. Then why new committees? First, the Informal Consultative Committees are not parliamentary committees. They are presided over by the respective Ministries of the government and there is no nominee of the Speaker who will hold balance between Ministers and the members. Secondly, they are not in the nature of scrutiny committees and do not organize their work on those lines though the members would very much wish to devote more time to the "oversight of administration" than listening to the exposition by the Ministers of the government policies. Thirdly, they are not even Consultative Committees in the sense that government does not orient or formulate its policy after consultation with them. The constitutional responsibility of Ministers to Parliament may prevent them from doing so. They may at best be educative committees, but the members have so many other means of getting information that this type of committee system is not partlicularly of advantage to them. Hence, parliamentary scrutiny can be conducted only when the committees have their status and functions properly defined and they are invested with the parliamentary privilege which enables them to function on behalf of Parliament. If Parliament does not take some such steps, it is leaving a large area of administration outside the parliamentary oversight. It may be interesting to note here that the House of Commons in the United Kingdom is thinking of establishing Standing Committees on Ministries on similar lines.

The Committees on Estimates and Public Undertakings are two important committees of Parliament. Their reports have been acclaimed as useful, instructive and weightly. Their recommendations are given the utmost consideration and careful thought by the administration. But they have such enormous work to do and it is increasing by leaps and bounds consequent on the increase in the activities of government that they are not able to complete scrutiny of whole administrative machinery within the life-time of one Lok Sabha. It is necessary that in order that their examination is continuous and all pervading, they should work more and more through sub-committees having more or less the powers of full committees in

certain respects so that the whole administration is covered at least twice within the life-time of one Lok Sabha. This is necessary if the parlimentary scrutiny is to be strengthened and made more efficient. This is also the practice in countries where similar committees exist.

Nowadays much is being said on the role of an appropriate machinery to give redress to the people who have grievances against the administration. In the ancient times benevolent kings heard the grievances of the people and gave them redress. In the modern democracies there being no single authority which can wield power this practice has gone into disuse. The authority of the Kings has in part been taken over by Parliament. No doubt there are Courts of Law which give relief to the citizens where law has been transgressed or not obeyed but there are grievances of the people which fall in the administrative domain of the Executive and cannot be questioned or taken to the Courts of Law. It is in the field of these grievances of the citizens against the Government that a machinery has to be devised. In some countries there are administrative tribunals which partly attend to grievances of administrative nature and give relief to the citizens but still there are a number of them which remain unattended. In the Scandinavian countries the institution of Ombudsman has been created through which public grievances are heard and dealt with. In some countries there has been much debate recently whether the institution as it functions in the Scandinavain countries or New Zealand should be adopted in toto or in some modified form. There has been a lot of debate on this in various countries and also in this country. It has been reported that the United Kingdom is considering the question of appointing a Parliamentary Commissioner for grievances. He has been functioning since April 1, 1967, when the Parliamentary Commissioner Act came into operation. It is absolutely essential that our Parliament should devise measures so that citizens' grievances against the administration are heard and as far as possible redressed. This is an area in which parliamentary scrutiny of the administration is at present very little. I feel that just as the Constitution has created certain offices such as the Comptroller and Auditor General, Union Public Service Commission, Election Commission, which are independent of the Executive and which report to Parliament through the Executive and Parliament has devised methods to examine and discuss these reports,

a time has come when an officer independent of the Executive is appointed under a statute of Parliament to receive and examine the grievances of citizens under specified conditions and to report to Parliament. The Lokpal and Lokayuktas Bill, 1971, is pending before Parliament, which seeks to provide a machinery to inquire into complaints based on actions of all Union public servants, including Ministers. These reports could be referred to the Committee on Petitions as in the case of Reports of the Comptroller and Auditor General which are referred to the Public Accounts Committee. This would ensure administrative accountability to Parliament insofar as citizens' grievances are concerned and save parliamentary time and Parliament from details.

What are the consequences if Parliament criticizes or disapproves an administrative act? Parliament does not issue any order direct to government officers. It acts through the Council of Ministers and its directions will be binding on them alone. Constitutionally, the Council of Ministers is responsible to Parliament for all administrative acts and it is they who take blame should Parliament disapprove of any administrative act. Parliament does not specify which government officer should be punished nor how he should be punished. This is left to the discretion of the Executive though Parliament may express its feelings. As to whether a government officer should be punished for an act which Parliament has criticized or disapproved, it is for the Executive to deal with the matter. Normally the Executive respects the wishes of Parliament but its action will depend upon several factors. First is the constitutional safeguard which a government officer enjoys. All the procedures prescribed therein have to be gone through by the government. Then the question arises whether the government officer acted on his own or he was carrying out the orders of the Minister. In most cases it becomes a moot point to distinguish one from the other because the rules of business of government give ample powers and discretion to the officers of government at all levels to exercise the powers of government. If an officer cannot prove that he was acting under the orders of the Minister or in accordance with the law and the rules he is at the mercy of government; but in most cases officers can establish successfully that there was justification for them to act or not to act in a particular manner and their individual responsibility cannot be estiblished beyond doubt. In such cases, it is the procedures which are blamed and steps are

taken to lay down new procedures to eliminate defects. There may be cases where an officer may not have acted under the authority of law or rules but nevertheless his action may be *bona fide*. In that case government may take a lenient view and defend the position in Parliament. Generally speaking, Parliament does not discuss the cases of individual officers by name and the Ministers also do not mention the names of officers either to praise them or abuse them. The Speaker has laid this down as a firm rule and whenever there is a deviation he reminds the members of it. This is so for the simple reason that officers have no chance to defend themselves on the floor of the House and Ministers may lose their sense of responsiblity to Parliament and begin to take shelter behind the government officers. In rare cases there may be need on the part of Ministers to disclose a name and to satisfy the House that action has been taken against the officer or that the officer was responsible because he had disobeyed the Minister. Mr. Herbert Morrison in his book *Government and Parliament* (page 324) supports this view. In Lok Subha too, there are instances to show that in exceptional circumstances names of the officers who have come in for adverse criticism have been mentioned in the House.

Government officers, who form part of the administrative apparatus, have a positive role to play. They are instrumental in helping government to arrive at policies and then to see that the policies are implemented successfully. It is incorrect to say that they are neutral or objective in approach. They have actively to assist government which is dynamic and has a mind of its own. They have to carry out the policies of Parliament which is vigorous and alert. Thus the officers have to be aggressive, forward-looking, and smart. They may be called upon to represent the Ministers in international conferences. They act as Ambassadors and spokesmen of government with foreign governments. They make policy statements on behalf of government. They explain government policies in reply to points raised by others. They are placed in control of huge Public Undertakings where large sums of money are involved. They are asked to negotiate treaties and agreements. But with all the active role that they are called upon to play, they have to avoid publicity, lime-light, or kudos for themselves. They have to speak or write in the name of government. Their responsibility is to government. If their statements or actions are criticized in Parliament, it is the Minister who has to defend the officers and if

things go wrong, it is he who has to pay the penalty. But if an officer assumes to himself the responsibility of making a pronouncement or makes a statement which is contrary to government decision or parliamentary policy, he may be censured by Parliament by name and Government, may be directed to take suitable disciplinary action against him. Similarly no officer of the Armed Forces can make any announcement which impinges on government policy. Parliament may take notice of it and direct the Ministers to pull him up.

Government has internal procedures whereby indisciplined or erring officers are suitably punished. While arriving at decisions, government takes note of parliamentary criticism in the House in respect of individual officers, but it is entirely within its discretion whether an officer should be punished and if so, what the nature of punishment should be. Parliament has a right to be informed in such cases and it may comment on non-punishment of inadequacy of punishment. Such comments are generally offered by individual members but there is no formal motion before the House nor is any vote taken to determine the issue.

In a committee an erring officer's position is rather shaky, if the committee comes to the conclusion that the officer is responsible for some financial irregularity or has been imprudent. The committee comes to the conclusion after sifting the relevent documents and the explanations of the officer concerned. Its conclusion is based on reasons and arguments. Its opinion is in writing. Government, if it comes to a different conclusion has to be careful to satisfy, the committee with counter reasons and arguments. After hearing the government, the committee may still adhere to its original views. In that case the matter goes before Parliament and in most cases government will have to satisfy Parliament if it sticks to its position. In the final analysis though legal power vests in the government, strong parliamentary opinion in any particular case will be an influencing factor in their decision.

Officers may come into direct contact with the members through correspondence or personal interviews. In general, members have been advised by the Speaker to write to or see the Ministers alone and not any officer of the government. There is also a move to lay this down as one of the articles of the Code of Conduct for Members of Parliament. Members have also been advised to write to Ministers on matters of general public importance only and not as a rule about individual grievances of Government servants for which normal

channels or representation are available. However, if a Government servant has availed of all the normal channels and still he has a grievance, which the member *prima facie* feels well founded, the member may write to the Minister to look into the matter himself. Nevertheless, members may see or write to officers of government also. Although no question of administrative accountability is involved, there is yet an obligation cast on the officer to be courteous to a member or to attend to his letter promptly. If the officer feels any delicacy, he should submit the matter to the Minister who may give a reply to the member. Nothing irritates a member more than delay in the receipt of a reply, vague or evasive reply. He appreciates a prompt and clear reply even if his request is not acceptable. A member judges the efficiency of a department by the way he is treated and this naturally has a great influence on him when he speaks about the department at question time or during debates.

Sometimes one hears that government servants lose initiative and efficiency and resort to methods or procedures whereby each officer seeks cover of his superior officer for his decisions because they are afraid of parliamentary scrutiny after the events have taken place. Those who say this, advocate, perhaps unwittingly, that there should be no parliamentary scrutiny of administration and that administration should not only have free hand in exercising executive and adminitrative powers conferred on them without any interference but they should have blank safeguards against public exposure, even in cases where their actions are not in public interest. I do not think that the vast majority of government servants who perform routine jobs or work according to rules have any apprehension of parliamentary scrutiny; rather they welcome it. The small percentage of government servants, who have this fear and on whose behalf this plea is taken, are those who have to use discretion in the discharge of their executive and administrative functions. No doubt, they are in a difficult position. Their actions may be criticised as it may not be apparent why the discretion was exercised in a particular way. Further, where more than one course of action is open, it may sometimes be argued that the course other than the one which was followed would have been more beneficial or effective. The person or authority who scrutinizes a situation after the results are known is in a better position to reflect with wisdom over the past. While all this may be true, it has to be remembered that Parliament or parliamentary committee is a place where all

opinions are freely expressed and, therefore, they take into account the circumstances in which a decision was arrived at and generally place best construction on an officer's motive, unless the facts *prima facie* have a different story to tell. Trouble for an officer arises only when the records are imperfect, the reasons why he has taken or not taken a decision are not recorded properly, or proper procedure laid down by the administration itself is not followed. In a large number of cases Parliament or its committees are very considerate and they accept government explanations. It is only in a few really bad cases that Parliament feels concerned. It is but right that this should be so if administration is to be kept in a state of perpetual efficiency and administration should not feel disheartened by such cases as it is in its interest too that bad officers are exposed.

The traditions laid down by Lok Sabha are high. It takes no notice of trivial matters; it is usually satisfied with the explanations of government in the less important matters. It is only in a few important cases that it takes a serious view. But its conclusions are arrived at only after a thorough investigation by one of its committees, where administration has full scope to lay its case it all its aspects before them. The administration can advance any relevant argument and the committee assesses with a judicial mind. Even after the committee has made a recommendation, government can argue again its case before them, and it is only when the matter remains unresolved between the committee and the government that it comes before the House. There is no case where it can be said that Lok Sabha had been in haste or perfunctory or not mindful of attenuating circumstances. Honest and conscientious officers have nothing to fear. Their boldness is and asset to them. All that they have to do is to show that they have followed the prescribed procedure and used discretionary power in the interest of the State and to its best advanage.

Nevertheless there is scope for improving the present position. At present a bad case may come to light after several years of its occurrence and the atmosphere in which decisions were taken may have changed. Officers and Ministers may have changed and it may be difficult to ascertain the truth at that late stage. What is bad for the morale of officers is the undue delay that occurs in dealing with such cases. Therefore, it is essential that administration must devise methods whereby such delays are eliminated. One possible remedy is to overhaul the present system of accounting and auditing. Parlia-

mentary committees have recommended in their various reports that accounting should be separated from audit; treasury system should be replaced by banking system; financial control should be decentralized and tightened locally. If Ministries are responsible for their own accounts and their current audit, both Ministers and Parliament will have an opportunity of looking at the defects concurrently and remedying them before the situation gets worse. Another urgent reform which is necessary is that procedure should be so devised that individual responsibility of officers is ascertainable at any time and the government takes departmental or disciplinary action in time so that things do not become worse before they reach Parliament.

8

COMPTROLLER AND AUDITOR-GENERAL IN INDIA AND THE U.K.

THE Comptroller and Auditor-General of India is appointed by the President by warrant under his hand and seal and he can only be removed from office in like manner and on like grounds as a Judge of the Supreme Court.[1] The President makes the appointment to the office of the Comptroller & Auditor-General on the advice of the Prime Minister. The incumbent of the post is usually one who has held high appointments in the Central Government Secretariat, for a wide knowledge and experience of the administration of the Government Departments are considered indispensable to this office.

The Comptroller & Auditor-General, before he enters upon his office, makes and subscribes before the President or some person appointed in that behalf by the President an oath or affirmation according to the form[2] set out in the Constitution.

[1]Clause (4) of Art. 124 of the Constitution says :

"A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."

[2]The form of oath/affirmation is as follows :

"I..... ....., having been appointed Comptroller & Auditor-General
swear in the name of God
of India do——————————————that I will bear true faith and allegi-
solemnly affirm
ance, to the Constituiion of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the

The Comptroller & Auditor-General has full administrative control over all the officers and staff serving in the Audit Department except that first appointments to the Indian Audit & Accounts Service are made by the President and powers regarding major disciplinary action in regard to the officers of that service, *viz.*, dismissal and removal from service vest in the President. The President can prescribe by rules the conditions of service of persons serving in the Audit and Accounts Department and the administrative powers of the Comptroller & Auditor-General only after consultation with the Comptroller & Auditor-General."[3]

The Comptroller & Auditor-General submits his Audit Report relating to the accounts of the Union to the President and that relating to the accounts of a State to the Governor of the State. The Constitution requires the President and the Governor to cause it to be laid[4] before each House of Parliament or before the legislature of the State as the case may be.

The salary and other conditions of service of the Comptroller & Auditor-General are required to be determined by Parliament[5] by law and neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be varied to his disadvantage after his appointment. The Comptroller & Auditor-General (Conditions of Service) Act, 1953. regulates certain conditions of his service in the matter of term of his office and pension. Other conditions of service, save as otherwise expressly provided for in the Act, are as specified in the Second Schedule of the Constitution. Under the Act, his term of office is fixed at six years. He is debarred[6] from eligibility for further office either under the Government of India or under the Government of any State after he has ceased to hold his office. The administrative expenses of his office are charged[7] upon the Consolidated Fund of India.

No Minister represents the Comptroller & Auditor-General in the houses of Parliament and no Minister can be called upon to take

duties of my office without fear or savour, affection or ill-will and that I will uphold the Constitution and the laws."

[3]Art. 148 (5) of the Constitution of India.

[4]Art. 151 *Ibid.*

[5]Art. 148(3) *Ibid.*—Parliament has now passed a comprehensive Legislation, *viz.*, the Comptroller and Auditor General's (Duties, Powers and Conditions of service) Act, 1971. This repeals also the Act of 1953.

[6]Art. 148(4) of the Constitution of India.

[7]Art. 148(6) *Ibid.*

any responsibility for any actions done or omitted to be done by him.

All the foregoing provisions go to show that the Comptroller & Auditor-General is an independent authority, free from control by any executive department of the Government or the Government of the day.

In the U.K. the Comptroller and Auditor-General is an Officer of the House of Commons. No Minister of the Crown therefore represents him in the House and no questions are asked of the Minister concerning the functioning of the Comptroller and Auditor-General. It is relevant to note here that because of this peculiar position of the Comptroller aud Auditor-General in the U.K. a recent Act of U.K. provides that if the Comptroller and Auditor-General authorises a Principal Officer of his department to perform his functions, that Officer can certify and report the accounts to the House of Commons only when the Speaker of the House of Commons has certified that the Comptroller and Auditor- General is unable to do so himself.[8]

In India the Comptroller and Auditor-General is not an Officer of the House. The Constitution does not give him that position. Also no convention or practice has been established to that effect. The result is that the Finance Minister represents the Comptroller and Auditor-General in the House[9]. It is through him that the Comptroller and Auditor-General can make his submissions to the House on any matter on which the House may desire information from him. When a question was asked of the Speaker whether he could place on the Table of the House the letters addressed to him by the Comtroller and Auditor-General he said that he could not do so because the Comptroller and Auditor-General functioned in relation to the House through the Finance Minister and any letters from the Comptroller and Auditor-General to the Speaker were private letters for his own information and benefit[10].

The Comptroller & Auditor-General is required to perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may

[8] *See* Exchequer and Audit Departments Act. 1957, U.K., Section 2(3).
[9] L.S. Deb., dated 18-4-1960. c. 12340.
[10] *See* L.S. Deb., dated 17-3-1960, cc. 6432-33.

be prescribed by or under any law made by Parliament, and until provision in that behalf is so made, to perform such duties and exercise such powers as were conferred on or exercised by the Auditor-General of India immediately before the commencement of the Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively[11]. Parliament has not so far prescribed by any law[12] the duties and powers of the Comptroller & Auditor-General. Some Acts[13] of Parliament

[11]Art. 149 *Ibid.*

[12]It has been stated recently that a Bill on the subject is under preparation and will be brought before Parliament in due Course. It is likely that the comments of the Public Accounts Committee may be invited on the Bill. In this connection, it may be noted that in the U.K. the first Exchequer and Audit Department Bill was prepared by the Treasury with the assistance of the Board of Audit and was introduced in the House by the Prime Minister. The Bill was committed by the House to the Public Accounts Committee which was then five years old. The Committee considered the clauses of the Bill, took evidence on it and made certain amendments.

See paragraph 2 of the historical memorandum prepared by the Comptroller & Auditor-General which was attached to the Report of 1916 Public Accounts Committee.

[13]The Acts are :

Damodar Valley Corporation Act, 1948.
The Employees State Insurance Act, 1948.
Industrial Finance Corporation Act, 1948.
Rehabilitation Finance Administration Act, 1948.
Air Corporations Act, 1953.
University Grants Commission Act, 1956.
Coal Mines (Conservation and Safety) Act, 1952.
Khadi & Village Industries Commission Act, 1956.
Coir Industry Act, 1953.
Institutes of Technology Act, 1961.
Institutes of Technology Amendment Act, 1963.
Textile Committee Act, 1963.
All India Institute of Medical Sciences Act, 1956.
Salarjung Museum Act, 1961.
The Bombay Port Trust Act. 1879.
The Madras Port Trust Act, 1905.
The Calcutta Port Trust Act, 1890.
Major Port Trust Act, 1963.
National Cooperative Development Corporation Act, 1962.
Delhi University Act, 1922.
Vishwabharati University Act, 1951.
Banaras Hindu University Act, 1915.
Aligarh Muslim University Act, 1920.

constituting corporations or other bodies have in individual cases prescribed that the Comptroller & Auditor-General should conduct the audit of such corporations or bodies. In the main, therefore, his duties continue to remain the same as were being performed by the Auditor-General of the Dominion of India before the Constitution came into force in accordance with Government of India (Audit & Accounts) Order, 1936, as adapted by the India (Provisional Constitution) Order,1947.

Before the Constitution came into force, the functions of the Auditor-General of the Dominion of India included keeping of accounts for Civil (except Railways) and Posts and Telegraphs Department of the Government and also making of payments in certain cases on their behalf—functions which normally belong to administrative departments. The transfer of accounting functions relating to Railways from the Auditor-General to the Railway authorities was completed by stages

Delhi Development Authority Act, 1957.
Central Warehousing Corporation Act, 1956.
See also Section 619 of the Indian Companies Act, 1956 which provides as follows :
"619 *Application of sections* 224 *to* 233 *to Government Companies.*—(1) In the case of a Government Company, the following provisions shall apply, notwithstanding anything contained in section 224 to 233.
(2) The auditor of a Government company shall be appointed or re-appointed by the Central Government on the advice of the Comptroller & Auditor General of Iddia.
(3) The Comptroller & Auditor-General of India shall have power—
(a) to direct the manner in which the company's accounts shall be audited by the Auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;
(b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf; and for the purposes of such audit, to require information, or additional information to be furnished to any person or persons so authorised, on such matters, by such person or pesons, and in such form, as the Comptroller & Auditor-General may, by general or special order, direct.
(4) The Auditor aforesaid shall submit a copy of his audit report to the Comptroller & Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit.
(5) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

in 1929. The Defence accounts have always been under the control of Financial Adviser—Defence—a wing of the Ministry of Finance of the Central Government. The Initial & Subsidiary Accounts Rules[14] placed the responsibility for keeping the initial accounts on Treasuries and Departmental officers. The reponsibility for payment by the offices under the control of the Comptroller & Auditor—General (*i.e.* Civil Accountants-General and Accountant-General, *Posts and Telegraphs) related to only a few provincial Headquarters* stations

The above position still continues[15] despite the fact that Parliament and the Public Accounts Committee have repeatedly pointed out the desirability of transferring the remaining accounting and payment functions to the administrative departments. Through the concerted efforts of the Comptroller & Auditor-General and the Government to bring about this obvious reform, some headway in a small measure has been made recently[16]. But the scheme of separation of accounts from the audit shows no marked progress or early fulfilment on the ground of deficiency of trained manpower and extra cost involved[17]. Therefore, in spite of the constitutional provisions placing the Comptroller & Auditor-General in an entirely

[14]The rules were made under sub-para (3) of para (11) of the Government of India (Audit & Accounts) Order, 1936

[15]In 1924 an experimental scheme of separation of Accounts from Audit was introduced on the civil side in the United Provinces (now Uttar Pradesh) and also in certain departments of the Government of India This experiment was abandoned in 1931 on financial grounds, as the separated accounts system was found to be expensive (See pp 18-19 of Introduction to Government Audit and Accounts (3rd Edition) 1963.]

[16]Separate Pay and Accounts Offices have been functioning since *1955* in the Ministries of Works, Housing and Supply, Food and Rehabilitation, Lok Sabha and Rajya Sabha Secretariats and the Union Territory of Pondicherry. Similarly, there are separate offices of Financial Adviser and Chief Accounts Officers attached to certain Irrigation Projects of the Central and State Governments The system of "separation" in these departments has been completed by arrangement under which the Comptroller and Auditor General performs his statutory audit duties by means of a test audit of these accounts

[17]Sometimes other arguments against the separation of accounts from audit are put forward In my opinion they seem to be based on expediency and practical difficulties in the working of the scheme as opposed to the fundamental principle of having a small, compact, efficient and totally independent audit organisation in accordance with the spirit and provisions of the Constitution Such arguments, briefly summarised, are as follows :

independent position, a certain subordination on his part to the Government in so far as accounting and payment functions are concerned is implied, though under a well regulated convention which Government fully and scrupulously observe. Government seldom interfere in the discretion of the Comptroller & Auditor-General in his day-to-day administration.

The combination of audit functions with the accounts and payment functions is likely to bring—and it frequently does bring—the Comptroller & Auditor-General under an indirect control of the Minister of Finance, for the Minister is very often called upon to answer questions in Parliament on matters which are handled by the Comptroller & Auditor-General on his behalf. Speaker Mavalankar ruled that so long as the Comptroller & Auditor-General was responsible for maintaining accounts in addition to conducting audit, admissibility of questions relating to the former must be regulated as in the case of any other Ministry. In regard to audit functions to the Comptroller & Auditor-General, questions relating to day-to-day administration are not normally admitted, but questions involving supply of factual data or statistics or on matters which have a bearing on policy may be admitted. Normally such questions are admitted for written answer only so that the need for raising supplementaries may be avoided. The Minister of Finance, who is responsible for answering such questions in the House, in practice gets the material for answer from the Comptroller & Auditor-General and places it before the House and may answer supplementaries from such additional material as the Comptroller & Auditor-General may have furnished him. In case the Minister has no information, he informs the House that he will request the Comptroller & Auditor-General to look into the matter.

(i) Accounting and audit functions are inter-related. The pre-check of claims before admission for payment, the examination of contract documents, etc., with reference to financial principles and practices undertaken in accounting are essentially audit processes Therefore, there is nothing inherently wrong in combining the two functions

(ii) An audit independent of administration is necessary to ensure that the internal accounting organisation has not slurred over its responsibility and has not been coerced by the administration in admitting questionable claims and overlooking irregular practices Where the accounting organisation itself is outside the control of the administration, there does not appear to be any objection in the combination of the two functions.

In the U.K., the Comptroller & Auditor-General—his full title being "Comptroller-General of the Receipt & Issue of Her Majesty's Exchequer and Auditor-General of Public Accounts"—is appointed by the Crown by Letters Patent on the advice of the Prime Minister but he is not required to make and subscribe an oath or affirmation before he enters upon his office. Like his Indian counterpart, the person appointed to the office has always held senior appointments in the Civil Service. The Comptroller & Auditor-General holds his office during good behaviour, subject however to his removal therefrom by the Crown on an address from the two Houses of Parliament. The Comptroller & Auditor-General is regarded as an officer of Parliament and his functions are set out in the Exchequer and Audit Department Acts of 1866 and 1921.

The duties and functions of the Comptroller & Auditor-General are or can be imposed upon him by (1) statutes, and (2) the Treasury. In carrying out the first of these, the Comptroller & Auditor-General is not responsible to the Executive. Questions in Parliament about his activities in this respect would be out of order as involving no Ministerial responsibility and therefore would not be received at the Table. If it were to be alleged that the Comptroller & Auditor-General is not carrying out these duties properly, it will be in order, though in fact it has never been done, for the Member making the allegations to put down a motion for an address to the Crown asking for the removal of the Comptroller & Auditor-General. In considering the Comptroller and Auditor-General's functions, it must be borne in mind that the questions arise from

(iii) Under the rules at present in force, certain responsibilities in the field of accounts have been imposed on the Comptroller & Auditor-General. Therefore, arrangements will have to be made for the consolidation of departmental accounts and the compilation of finance accounts of the Central and State Governments as a whole. This co-ordinating role will imply that uniformity in accounting principles and processes in the units dispersed in the various Ministries has to be maintained. In this connection, the recent reorganisation of the States on linguistic basis where official business is transacted in the language of the State, has raised yet another obstacle in the way of uniform accounting procedure.

(iv) As the Constitution provides for a single Comptroller & Auditor-General unlike other federal Constitutions the implications of the disintegation of a specialised department which has been built up over a period of a century with traditions of integrity and efficiency have to be studied carefully.

the desire for information of an individual Member, not of the House. Since the Comptroller & Auditor-General is regarded a servant of the House and not of an individual Member, a question is not the appropriate method for eliciting additional information from him. The proper procedure is to move for a Return ordering him to produce the required information. But, here again this procedure has never been adopted.

As regards the second category of the Comptroller & Auditor-General's duties, however, he is differently placed since the executive lays those duties upon him and so, to the extent Ministerial responsibility exists, questions are in order. Questions asking, for example, whether accounts not previously subject to the audit should in future be made so subject, have frequently been admitted. Questions concerning the establishment[18] of the Exchequer and the Audit Department, the staff of which are civil servants, can similarly be asked. Such questions would be addressed to the Chancellor of the Exchequer and answered by the Financial Secretary in the Treasury. He would, of course, take the responsibility for answering any supplementary questions although in case of doubt it would be for the Chair to decide whether the supplementaries to the questions are in order.

In the U.K., the Comptroller & Auditor-General is concerned with the Audit and Exchequer functions only. Every appropriation account[19] is examined by him on behalf of the House of Commons and in the examination of such accounts the Comptroller & Auditor-General satisfies himself that the money expended has been applied to the purpose or purposes for which the grants made by Parliament were intended to provide and that the expenditure conforms to the authorities governing it[20]. The Comptroller & Auditor-General is required to report to the House of Commons any important change in the extent or character of any examination made by him.

The Comptroller & Auditor-General is also required to examine on behalf of the House of Commons all the statements of accounts showing the income and expenditure account of any ship-building, manufacturing, trading or commercial services conducted by any

[18]The total staff of Audit Department is 500 of which 400 are auditors.
[19]There are 160 Appropriation Accounts.
[20]Section 20 (7) of the Exchequer and Audit Department Act, 1866.

Department of the Government, together with such balance-sheets and statements of profit and loss and particulars of costs as the Treasury may require them to prepare and he shall certify and report on them to the House of Commons.

Both in India and the U.K., the Comptroller & Auditor-General may undertake by consent the audit of accounts[21] of *ex-officio* transactions of Public Offices in non-voted money; of semi-independent or independent bodies and certain international bodies.

In the U.K., the dates when the accounts should be compiled by the Departments concerned and transmitted to the Audit Department and the report thereon submitted by the Comptroller & Auditor-General to the House of Commons are laid down by the Exchequer and Audit Department Act and all concerned are required to conform to these dates. The time-table is so devised that the accounts relating to civil services and revenue departments including all other trading accounts relating to ship-building, manufacturing, trading and commercial accounts should be presented to the House of Commons by the 31st January and the accounts relating to army, navy and air force should be presented to the House of Commons by the 15th March, after the termination of the financial year to which the relevant accounts relate.

In the U.K., the Comptroller & Auditor-General audits the accounts of receipts of revenue and of every receiver of money which by law is payable into the Exchequer. In India, however, several important categories[22] of revenue are still not audited.

[21]In the U.K. such accounts cover a wide range of activity, some like the Hospital accounts directly financed from Votes and others like the Insurance Fund Accounts financed mainly from contributions. There are a number of semi-public accounts such as those of the Church Estates Commissioners. In all, he certifies about 370 accounts each year.

[22]In view of certain difficulties-encountered by the C. & A.G., the audit of Revenue Receipts etc. could not be undertaken on a regular basis until 1961. A separate Chapter dealing with metters arising out of audit of Revenue Receipts was incorporated in Audit Report (Civil) 1962 for the first time. A separate report—Audit Report (Civil) Revenue Receipts is being presented to Parliament from 1963, which deals mainly with the four major revenue heads, namely, Customs, Union Excise, Corporation Tax and Income Tax. As some of the direct taxes *e.g.* Wealth Tax, Gift Tax and Estate Duties had still not been brought within the purview of Audit, the Public Accounts Committee recommended in para 1.111 of their 46th Report (3rd Lok Sabha) that the scope of Revenue Audit should be suitably extended forthwith so as to include

Both in India and the U.K. details of the expenditure out of the secret service are not examined by the Comptroller & Auditor-General and Parliament is content with a certificate to the Appropriation Account saying that the amount shown in the account to have been expended is supported by certificates from responsible Ministers or officers as in India the Secretary of the Ministry concerned gives the prescribed cartificate.

In the U.K., *it is laid down in the letter of appointment of* Accounting Officers, who are as a rule permanent Heads of Departments and generally recognized by Ministers, that it is their duty to represent to Ministers their objections to any course of action which they regard as involving inefficient or uneconomical administration. If such objections involve the Accounting Officer's personal liability on a question of formal regularity or propriety, he has to set out his objections to the proposed expenditure and his ground for it, in writing, to his Minister, and he only makes the payment upon a written instruction from his Minister overruling the objection. After making the payment he informs the Treasury of the circumstances and sends the papers to the Comptroller & Auditor-General for the information of the Public Accounts Committee, which would no doubt then acquit him of any personal responsibility for the expenditure.

In India since the 20th August, 1958, when revised arrangements for financial control were introduced whereby wider financial powers were given to administrative Ministries and financial advice was decentralised, it has been laid down as follows :

"All cases in which the advice tendered by the Financial Adviser of the Ministry is not accepted should be referred to the Secretary of the Ministry for his orders and if the Secretary also

all the central taxes without any distinction and reservations. This suggestion has been accepted by the Government.

In this connection, it is useful to bear in mind the following quotation from the review of the working of the Exchequer & Audit Departments Act of 1866, prepared by the Comptroller & Auditor-General in the U.K. in 1916 :

"The knowledge that the Comptroller & Auditor-General was cognizant of the manner in which the dispensing power was exercised and might report to the Public Accounts Committee any case in which he considered that the particular exercise of the power ought to be brought to the knowledge of the Committee or of Parliament would of itself act as a check against any undue inclusion owing to leniency on the part of the different revenue departments."

differs from the advice, the case should be brought to the notice of the Minister. A monthly statement of cases, if any, where the Financial Adviser's views have not been accepted, giving a summary of the differences and the final decision should be forwarded by the Secretary of the Ministry to the Ministry of Finance for information, a copy being endorsed to the Comptroller & Auditor-General simultaneously."

Both in the U.K. and in India audit reports of the Comptroller & Auditor-General stand automatically referred to the Committee of Public Accounts which in the U.K. consists of Members of the House of Commons only while in India it is a body composed of fifteen Members of the Lok Sabha, with which seven Members of the Rajya Sabha are associated at the request of the Lok Sabha, the request being renewed every year by a separate resolution of the Lok Sabha in which the Rajya Sabha is asked to concur before nominating its Members.

The functions of the Public Accounts Committee in the U.K. and India are respectively laid down in the Standing Orders of the House of Commons and in the Rules of Procedure of the Lok Sabha.

Both in India and the U.K. the Appropriation Accounts are presented together with the Audit Report of the Comptroller and Auditor-General to the House. The Report of the Comptroller and Auditor-General is on the Appropriatton Accounts and therefore the Audit Report would not be complete unless the Appropriation Accounts are also presented to the House. Thus it is necessary that both the Appropriation Accounts and the Audit Report thereon should be presented simultaneously to the House. There have, however, been two exceptions so far as India is concerned. In 1958 and 1960 the Audit Report on the Defence Appropriation Accounts was presented to the House before the relevant Appropriation Accounts. In 1958 the Audit Report was laid on the Table of the House on 17th December, 1958, and the Appropriation Accounts on 10th March, 1959. In 1960 the Audit Report was laid on the Table of the House on 8th April, 1960, and the Appropriation Accounts on 8th August, 1960.

In this connection in 1957 a question was raised by the Ministry of Finance (Defence) whether it was constitutionally obligatory on the Government of India to place the Appropriation Accounts on the Table of the House. The Ministry of Finance (Defence) suggested

that the Appropriation Accounts be not laid on the Table of the House so that they were not made public but copies thereof might be circulated to the Members of Parliament separately after the Audit Report had been laid on the Table of the House. The Speaker, to whom the matter was referred for decision, gave the following ruling :

(i) If the Speaker authorises the distribution or sale of any document or report in connection with the business of the House under Rule 382 of the Rules of Procedure, there is no provision in the Rules under which the supply of such documents can be withheld from the Press, as these also become public documents.

(ii) The Appropriation Accounts are the final outcome of the process by which expenditure proposals are submitted to Parliament, considered, discussed and voted by it. When the moneys have been spent, the results are exhibited in the form of Appropriation Accounts which are laid before Parliament. Moreover, the Appropriation Accounts are the documents which form the basis of the Comptroller and Auditor-General's Audit Report as enjoined in Article 149 of the Constitution read with paragraphs 13(1)(i) and (iii) of the Government of India (Audit and Accounts) Order, 1936, as adapted under the India (Provisional Constitution) Order, 1947. The study of the Audit Report cannot be complete without a study of the relevant Accounts on which it is based. The Appropriation Accounts thus form an inseparable adjunct of the Audit Report and the Appropriation Accounts cannot, therefore, be treated as separate entities for the purpose of their being laid before Parliament as prescribed in Article 151(1) of the Constitution.

(iii) When the Government of India Act, 1935, was in force, it had been the convention to lay the Appropriation Accounts on the Table of the House along with the Audit Report thereon. This itself appears to have been based on the analogy of the provisions contained in Section 21 of the U.K. Exchequer and Audit Departments Act, 1866.

(iv) Till such time as a law is made by Parliament defining the duties of the Comptroller and Auditor-General, he will, under Article 149 of the Constitution, perform such duties as were performed by him immediately before the commence-

ment of the Constitution in relation to the accounts of the Dominion of India. Therefore, it is incumbent upon Government to continue the practice in this behalf that was in force before the commencement of the Constitution.

On the 21st April, 1960, a point was raised by a Member in the Lok Sabha that in accordance with the decision of the Speaker both the Appropriation Accounts and the Audit Report relating to Defence Services should have been laid on the Table of the House simultaneously. The Minister of Finance was of the opinion that the decision (referred to above) related to the question whether the Appropriation Accounts could be circulated to Members separately and not laid on the Table of the House. It was not intended, in his view, that the Appropriation Accounts and the connected Audit Report should be presented together. The Speaker confirmed the view held by the Finance Minister that the question of laying of Audit Reports and Appropriation Accounts simultaneously was not the point at issue at that time.

In India soon after Independence in consequence of the partition of the country the preparation of Appropriation Accounts and the Audit Reports thereon fell into heavy arrears with the result that it was several years before the accounts of a particular year came before Parliament. In 1952 the Public Accounts Committee commented upon the delay in presenting the Audit Reports and the Appropriation Accounts to the House with the result that the Public Accounts Committee was called upon to consider them years after the events had taken place. It pressed for early submission of the Audit Reports and the Appropriation Accounts so that in appropriate cases remedial measures could be initiated before it was too late. The Comptroller and Auditor-General informed the Public Accounts Committee of the difficulties in completing the arrears of the audit and therefore his inability to present the Reports much faster than what had already been achieved. He, however, promised to examine the suggestion that preliminary reports on grave irregularities unconnected with Appropriation Accounts[23] would be submitted by him during the course of the year. In pursuance of this suggestion which the Public Accounts Committee accepted, the Comptroller and Auditor-General presented the first preliminary report on the

[23]PAC 7th Report 1952-53: Para 4 page 464, Minutes of the sitting of the PAC held on 8th July, 1952.

Railway Accounts in 1952. He also presented such reports on the Civil Accounts and P. & T. Accounts during the years 1955, 1956 and 1957. The Defence Accounts were, however, treated differently. The observations of the Comptroller and Auditor-General on the current year's important irregularities were included in the Report on the accounts of the previous year[24].

In the U.K. there is no such practice. There the Comptroller and Auditor-General completes the audit of the accounts by the date laid down in the Exchequer and Audit Departments Act, 1866, as amended, and there is no provision nor practice regarding submission of preliminary or interim reports.

It is often stated that the function of the Public Accounts Committee—*i.e.*, the scrutiny of Audit reports—is merely *post mortem*. Speaker Mavalankar, while speaking at the inaugural meeting of the first Public Accounts Committee which was set up after the Constitution came into force, deprecated this approach and asserted that the "Public Accounts Committee can influence a good deal even the running administration as we alwyas profit by past experience." As some one has said, the great progress which medical science claims today and has undoubtedly attained is mainly based on the detailed *post-mortem* researches conducted all these years Referring to the approach which the Public Accounts Committee should adopt in doing its work, Speakar Mavalankar made the following significant observations:

"(i) I have always believed that after all, whatever the quality and quantum of expert knowledge, it has to be tested by the service it renders to the common consumer and therefore the consumer's or the layman's ideals in this respect have to be taken into consideration.

(ii) Members of Parliament will better understand the intention and the mind of Parliament than the Comptroller & Auditor-General and they can better exercise their discretion and judgement.

(iii) We are divided, opposed, so long as we discuss a matter and so long as finality is not reached. The moment finality is reached it should be the effort of everyone to support that.

[24] *See* Para 33 of Audit Report (Defence Services) 1958; Para 31 of Audit Report (Defence Services) 1960.

You are sitting in the Committee to go by what the Parliament had laid down. The direct corollary is that there must not be any party politics so far as examination of the accounts is concerned.

(iv) Even in cases where the Committee finds that money has not been properly spent or proper sanction has not been obtained or that the interpretation put by the executive officers or the Audit Department is wrong, we have to see their point of view and unless one is convinced by proof, not by mere suspicion, that there is something wrong somewhere in the sence that there is some misappropriation or mishandling of the money, our approach has always to be one of sympathy and one of give and take."

These principles cast a heavy responsibility on the Comptroller & Auditor-General to so conduct the audit of accounts that a really objective analysis of his findings is available to the Committee and the facts on which his observations are based are undisputed. This also means that only first class issues are brought before Parliament and the Public Accounts Committee through his reports and minor and technical details are eschewed.

Both in the U.K. and India, the reports[25] of the Comptroller & Auditor-General are the basis of the investigation of the Public Accounts Committee and although they are necessarily brief, a whole year's work of the entire Department is available to the committee. So far as the technical examination of the expenditure in-

[25]In paragraph 1 (Introductory) of Audit Report—Central (Civil), 1955, the Comptroller & Auditor-General has stated as follows :
"Irregularities in respect of which adequate remedial measures, including suitable disciplinary action, where necessary, have been taken by Government, have been excluded from this report."
A similar para was included in the Audit Report (Defence Services), 1957. There is no such stipulation in the U.K. Audit Reports.
Thus, the Comptroller & Auditor-General in India, has taken it upon himself to judge *finally* in every case of irregularity whether *adequate* (a) disciplinary action has been taken, and (b) steps have been taken to prevent such cases in future. Parliament and the Public Accounts Committee do not see the light of such csaes. There is a danger that parliamentary control over public expenditure may be vitiated if facts relating to the irregularity committed and the action taken by Government are not included in the audit reports and the matter is left to be determined between Government and the Comptroller & Auditor-General departmentally.

curred by the Government Department is concerned, the Audit Department has delved deeply and brought to bear upon such examination all its expert knowledge and experience. It is then for the Committee of Public Accounts to apply its mind from the layman's point of view, as pointed out by Speaker Mavalankar, and to make its observations from the taxpayer's and consumer's point of view.

In India the Comptroller and Auditor-General before he includes his observations finally in the Audit Report gives an opportunity[26] to

[26] *See* Article 268. [Since incorporated in para 40 of C. & A.G's Manual of Standing Orders (Tech.) Vol. II] of the Audit Code which reads :
"It is desirable that the Government concerned should have an opportunity of making such observations and comments as it may think fit on important cases of financial irregularity which it is proposed to include in the Audit Report. The procedure for reporting such cases to the Government should be such as may be determined by the Accountant-General in consultation with *the Finance Ministry or Department. The draft of all matters in which it is* proposed to question the action of the Finance Ministry or Department and of all matters which it is proposed to record under item (7) of Article 264 should be shown to the Finance Ministry or Department of the Government concerned before the final inclusion in the report so that that Department may have an opportunity of suggesting correction or modification. This is done as a matter of precaution and is not obligatory."
On the question whether Audit Code was a statutory document and whether it was binding on all concerned, the Finance Minister made the following observations in the Lok Sabha on the 18th April, 1960 :—
"The broad features of both the provisions of the Constitution and the Government of India Audit and Accounts Order, 1936, are that while in the matter of maintenance of accounts the Comptroller and Auditor-General has to obtain the approval of the President regarding the form in which they should be kept, there are no rules in existence either in the Constitution or in the Order which lay down the manner in which he will conduct the audit of accounts. Paragraph 13 of the Order merely lays down that it shall be his duty to audit all expenditure and to report on the expenditure, transactions or accounts so audited by him, but it does not in terms state how he will conduct such audits and what he should say in the Report. Para 19 of the Order, however, lays down that whatever in the Order is directed to be done by the Auditor-General may be done by an officer of his department authorised by him either generally or specially. It is in pursuance of this authority that the Comptroller and Auditor-General frames rules and gives directions to the officers of his department in all matters pertaining to audit of expenditure. It is these rules and regulations which are embodied in the Audit Code, and this Code is, therefore, issued on the sole authority of the Comptroller and Auditor-General and is binding on nobody except his own officers. The provisions of the Audit Code can be amended or altered in

the administrative Ministry or Department concerned to verify the facts contained in his preliminary draft paragraphs and to place before him such material as the administrative Ministry may like to give him in this connection so that the facts are accurately incorporated in the Audit Report and that the observations of the Comptroller and the Auditor-General are relevant to the facts of the case. Originally when draft paragraphs to be included in the Audit Report were sent by the Comptroller and Auditor-General to the Ministries concerned, the Ministries took a long time in replying to them with the result that the Audit Reports were unduly delayed. In order to avoid this delay and also criticism[27] from the Public Accounts Committee on the late submission of the Audit Reports, the Comptroller and Auditor-General has accepted the advice of the Committee that he should give six weeks[28] to the Ministries to examine the factual data contained in his draft and if the Ministries did not furnish him with their comments within that period he was free to

the sole discretion of the Comptroller and Auditor-General. Indeed, he need never have published a Code at all, but could have given, as he presumably does, instructions to his officers from time to time regarding the manner in which such officers should perform their duties delegated to them by the Comptroller and Auditor-General himself."

[27]In para 12 of their Report of 1943-44, the Public Accounts Committee stated as follows :

"*Delays in meeting Audit Requirements.*—We are concerned to note that many of the executive officers of the Posts and Telegraphs Department specially in the Bengal and Assam and Bihar and Orissa Circles have inordinately delayed their replies to Audit Inspection Reports. We regard it as essential in conditions recently obtaining when there has been so much scope for improper practices, that replies to Audit enquiries should be furnished as early as possible and we desire the Department to circularise its subordinate offices impressing upon them the necessity of doing so.

We have also observed that Departments of Government sometimes delay greatly the return of draft paragraphs of Audit Reports sent to them for acceptance. Such delays are undesirable and there is no real reason why they should occur, for the agreement sought is basically on questions of fact about which normally there cannot be much dispute. We suggest that no more than a period of six weeks should be allowed to Departments to accept or modify the terms of paragraphs sent to them failing which Audit should be at liberty to consider its own draft as final."

This recommendation of the Public Accounts Committee was circulated by he Finance Department to all the Departments of Government in 1946.

The period is eight weeks in respect of paras floated by Directors of Audit ocated at London and Washington.

make use of the material already in his possession for the purpose of compiling his Audit Report[29].

In the U.K. there is no such period laid down either in a Statute or practice. There the Ministries verify the facts as quickly as they can and send their comments to the Comptroller and Auditor-General within a reasonable period, as under the law the Comptroller and Auditor-General has to submit his Reports to the Treasury by the dates specified in the Exchequer and Audit Departments Act, 1866.

In the U.K. the Comptroller and Auditor-General incorporates in his paragraphs the facts as supplied to him by the Ministry concerned and may also summarise the interim correspondence which the Comptroller and Auditor-General and Ministry have on a particular matter if he feels that it is of sufficient importance for the full understanding of the matters referred to in the Audit Report[30]. The reading of the Audit Report therefore gives to the reader a balanced picture of the facts as known to the Comptroller and Auditor-General after verification by the administrative Ministry and the comments of the Comptroller and Auditor-General.

In India, the Audit Reports do not generally give the list of correspondence or discussion between the Comptroller and Auditor-General and the administrative Ministry in a succinct way with the result that the paragraphs are substantially a version of the Comptroller and Auditor-General based on his understanding of the facts as presented to him by the administrative Ministries. Not infrequently the administrative Ministries contest the facts before the Public Accounts Committee and supplement the statements in the Audit Reports by a set of further facts or in a different form. This deficiency does not arise because of lack of instructions or insufficiency of directions on the subject[31] from the Comptroller and Auditor-General but it arises from the fact that the Audit Reports are not written by the Comptroller and Auditor-General himself but are a product of different Accountants-General and their sub-

[29] *See* also para 6, Introduction, 25th Report of PAC, 1959-60 and page 66 verbatim proceedings of PAC dated 7-12-1959 and 3-2-1960.

[30] *See* Article 187 of the Exchequer and Audit Departments Manual, U.K. For example *see* also Paragraphs 12 to 37 of the U.K. Audit Report on Civil Appropriation Accounts (Classes VI—X) 1958-59.

[31] *See* Articles 264, 265, 266, 267 and 269 of the Audit Code.

ordinates whose reports the Comptroller and Auditor-General countersigns.

It often happens that the concerned Ministries do not supply their comments on the draft paragraphs within the stipulated period of six or eight weeks and the matter is included in the Audit Report. In such cases the facts stated in the Audit Report may not be completely correct. But the Public Accounts Committee should all the same be apprised of the correct and complete facts of a case to enable them to formulate their conclusions. The Public Accounts Committee have been of the view that the C. & A. G. should be apprised of the correct position as soon as possible even after the Audit Report has been presented to Parliament. At a sitting[32] of the Committee a point was raised whether in connection with a para in the Audit Report which had been laid on the Table and made public, further material concerning facts should be placed before the Public Accounts Committee when they took up examination of the paragraph or furnished to the C. & A. G. as soon as they came to light. The Committee observed that in accordance with the established convention, any factual information to be placed before the P.A.C. was required to be verified by Audit. It was, therefore, only appropriate that such (further) material were sent to the Committee through the C. & A. G.

The Audit Report may include cases which though they have arisen in previous years[33] have either been partly referred to in the previous Audit Reports or not referred to at all because the Comptroller and Auditor-General had not examined the matters fully. Sometimes such cases relate to many years previous to the year for which the report is made. There is no linking with the past reports and they stand by themselves. This does not make the Audit Report self-contained with regard to one year's account only but it becomes an omnibus

[32] *See* proceedings of the sitting of the P.A.C. held on 3rd February, 1960.

[33] *See* Note under Art. 259 of the Audit Code. It reads as follows :

"The Appropriation Accounts deal with the financial year ending on the 31st March. The Audit Report also deals with the transactions brought to account upto the end of the financial year to which the Appropriation Accounts relate. A convention has, however, been established that it may also contain references to transactions accounted for in a previous year concerning which further information has since been obtained or transactions in a later year concerning which it is desirable that the Legislature should possess early knowledge."

report referring to any number of cases of the current and past years[34]. There is thus no certainty that a year's accounts have been finally audited and that there will be no audit comments thereon subsequently.

In the U.K. the audit report relates to the accounts of the year to which the report relates and the previous cases may be referred only where there is a reference in the previous Reports that they will be carried over to the next year for the reasons stated therein[35].

In India there is no fixed date by which the Appropriation Accounts, where they are maintained by the administrative Ministries, such as Defence and Railways, should be submitted to the Comptroller and Auditor-General nor is there any date fixed for the presentation of the Audit Reports[36] by the Comptroller and Auditor-General to the President and by the President of the House. At present this is done according to the convenience of the various parties concerned. The Audit Reports and the Appropriation Accounts are thus laid on the Table of the House any time during the year and the Reports relating to the same kind of accounts may be laid on different dates in different years. After the Audit Report is submitted to the President, the responsibility of the Comptroller and Auditor-General under the Constitution is over. He is not concerned as to when and how the Audit Reports should be presented to the House and what the House should do thereafter. The

[34] *See* (*i*) Appropriation Accounts (Post and Telegraphs) 1958-59 and the Audit Report 1960—para 34, page 44.
(*ii*) Audit Report (Defence Services) 1960—para 32.
(*iii*) Audit Report (Defence Services) 1958—para 33.

[35] *See* Articles 189 & 190 of the Exchequer and Audit Departments Manual, U.K. For example also *see* Paragraphs 12 to 37 of the U.K. Audit Report on Civil Appropriation Accounts (Classes VI—X) 1958-59.

[36] A point of order was raised in Lok Sabha on the 9th April, 1960, that the Defence Audit Report had been signed by the Director of Audit on the 24th March, 1960 and countersigned by the Comptroller and Auditor-General on the 28th March, 1960, whereas the copies of the Report had been printed on the 18th March, 1960, *i.e.* before the Report was actually signed. It was urged that it was an invalid document. The Speaker, ruling out the point of order, observed as follows :
"Every day, we are aware that before I sign, I ask copies to be printed. Until I sign, the copies would not be issued, and the paper takes currency or becomes valid only from the time when I sign it. That is common knowledge. So, there is nothing in the point of order."
(L.S. Deb. dated 9-4-60, c. 10794)

Audit Report as a matter of practice is received by the Minister of Finance on behalf of the President and immediately thereafter[37] he makes a request to the Minister of Parliamentary Affairs to fix a date for its presentation to the Houses of Parliament. The Minister of Parliamentary Affairs fixes a date which may be soon after the request is made to him depending upon the next sitting of the House or Houses as the case may be. If the Reports have to be presented simultaneously to both the Houses, he choses a convenient date soon after the request is made to him. Usually it is within two to three days of the date of request that the Report is laid on the Table of the House.

In the U.K. as already stated, the dates have been fixed in the Exchequer and Audit Departments Act and those dates have to be adhered to.

The Audit Reports, together with the connected Appropriation Accounts, are so voluminous that it is impossible for a layman to have an idea of all the facts and figures contained in the documents in a reasonably short time. In order to assist the Members of the Public Accounts Committee, a key of the Audit Report and the connected Appropriation Accounts and other papers (which used to be prepared by the Comptroller & Auditor-General until recently) is now prepared by the Secretariat of the Committee and copies thereof circulated to the Members in advance[38].

In paragraph 24 of the historical memorandum attached to the 1916 U.K. Committee's Second Report, it is stated that :

[37] Usually it is within a period of 7 to 10 days of the date of receipt of the Audit Report. Sometimes the request is made even earlier.
In the course of his speech at Conference of Chairmen of Public Accounts Committees held in April, 1966 the C. & A.G. reported that in certain cases State Governments had taken several months to lay the Audit Reports on the Table of State Legislature. The Conference expressed the opinion that it should be provided that Audit Reports are presented to Parliament/State Legislatures within a week of their receipt from the C. & A.G. In case Parliament or State Legislature is not in session the Report should be presented on the first day when the House resembles.

[38] In certain important cases, *e.g.*, Export Promotion Scheme and the allied matters, referred to in Para 88 of the Audit Report (Civil) on Revenue Receipts, 1965 and Purchase of Road Rollers referred to in para 78 of Audit Report (Civil) 1967, detailed written information was collected on the initiative of the Lok Sabha Secretariat, who also prepared comprehensive questionnaire for the examination of the representatives of the Ministries concerned.

"The Public Accounts Committee have never considered that the Comptroller & Auditor-General is limited in his Reports merely to those points which he is bound to bring to the notice of Parliament. The Committee of 1888 stated that while it is no doubt difficult in all cases to draw a distinction between questions bearing directly on audit matters and those which may trench on administrative functions, yet at the same time, if in the course of his audit the Comptroller & Auditor-General becomes aware of facts which appear to him to indicate an improper expenditure or waste of public money, it is his duty to call the attention of Parliament to them. The Select Committee of 1902 on National Expenditure recommended the Public Accounts Committee, even more than in the past, to encourage the Comptroller & Auditor-General to scrutinise and criticise improper or wasteful expenditure."

Thus in U.K., the Comptroller & Auditor-General with the encouragement of Parliament began to enquire into the wisdom, faithfullness and economy in public expenditure as early as the 19th Century.

The Comptroller & Auditor-General in India has construed his powers in a similar manner and he has in fact sometimes raised larger questions involving wiser spending and reforms in procedure, organisation, change of rules, etc.[39]. Conflicting opinions

[39]Examples of such matters are :

(1) The Comptroller & Auditor-General suggested that for better organization and to secure efficiency it was worthwhile to introduce the administrative audit system by the departments concerned even if it entailed a little extra expenditure. [Para 21(i) (3) of Audit Report (Civil), 1950.]

(2) Government is not competent to regulate air travel for Ministers under executive orders. [Para 22 (c) of Audit Report, 1953 (Civil).]

(3) It was improper to grant to Judges any emoluments not provided by law. [Para 24(p) of Audit Report (Defence), 1950.]

(4) Procedure with regard to placing of contracts should be changed. [Para 54 of Audit Report (Defence), 1950.]

(5) The Comptroller & Auditor-General should have the right to audit expenditure of the State-sponsored concerns by whatever name they were called. (Comptroller & Auditor-General's statement at Appendix I, 3rd Report, First Lok Sabha.)

(6) Suggestions made regarding scrutiny of Budget Estimates and revlsion of financial control in the various Ministries [Appendix to Audit Report (Civil), 1955. Pt. I.]

had been expressed about the powers and functions of the Comptroller and Auditor-General and the procedure adopted by him in auditing the accounts of Government and reporting thereon[40]. The Public Accounts Committee expressed the view that "it is the duty of Audit to see that administrative action is not only in conformity with prescribed law, financial rules and procedure but it is also proper and does not result in any extravagance, loss or infructuous expenditure."

In the U.K., accounts other than Appropriation Accounts audited by the Comptroller & Auditor-General are presented to Parliament

(7) Certain grants given by the University Grants Commission to educational institutions were not covered by the U.G.C. Act, 1956. [*See* para 106 of Audit Report (Civil), 1964, and para 130 of Audit Report Civil), 1967.]

(8) It was pointed out that there was no procedure for supplying to Audit particulars of "approved schemes" under each "Head of Development" in which Central assistance was proposed to be given to States. [*See* para 19 of Audit Report (Civil), 1965.]

(9) The dates of expiry of life of medicines were not indicated in the stock registers maintained by the Safdarjang and Willingdon Hospitals at New Delhi. [*See* para 44(ii) of Audit Report (Civil), 1965.]

(10) A suggestion was made for examining the possibility of coordinating requirements of medicines and equipment by dispensaries and Hospitals in Delhi and making purchases on the basis of annual contracts. [*See* para 45(1) of Audit Report (Civil), 1967.]

(11) It was indicated that the *per capita* cost of training of students at the National School of Drama and Asian Theatre Institute was on the high side. [*Para* 107(c) of Audit Report (Civil), 1967.]

(12) Payments of grants by Government to the National Campaign Committee, which did not have a legal—status as registered body, were irregular, [Para 114 of Audit Report (Civil). 1967.]

(13) Chapter I of the Audit Report (Civil), 1967 deals comprehensively with the finance of the Government of India for the Third Plan Period, as a whole. It highlights the growth of non-development expenditure and of defence expenditure. Special attention has also been paid to the debt posision of the Government, Grants and Loans from Foreign Sources, Loans and Advances by the Central Government etc.

Similarly, in the Audit Report (Railways) 1967, a full chapter has been devoted to the plan outlay and achievement and the financial position of the Railways.

Again, Chapter I of the Auditor Report (Posts & Telegraphs) 1967 also deals with the revenue position of the Posts & Telegraphs in the Third Plan period.

[40]The Public Accounts Committee dealt with some of these aspects in Chapter VIII of their 4th Report (3rd Lok Sabha).

as White Papers while in India they are laid on the Table of the House like any other documents.

Normally both in India and the U.K. the Audit Reports and the Appropriation Accounts stand referred to the Public Accounts Committee as soon as they are laid on the Table of the house[41]. The House does not normally refer to them in its proceedings until the Public Accounts Committee have examined and made a report, but there are exceptions both in the U.K. and India when Members have referred to an Audit Report immediately after it was laid on the table of the House and before it was considered by the Public Acounts Committtee[42].

During the discussion on Demands for Grants relating to the Defence Ministry a question was raised in Lok Sabha whether Members could refer to the Audit Report on the Defence Accounts which had been laid on the Table of the House that morning. The Speaker ruled that since the Report had been laid on the Table of the House it could be referred to during the debates and the Minister could reply to the points without prejudice to what the Public Accounts Committee might report later after examination by it[43]. The Minister of Defence replied to some points which were raised during the discussion[44] and later laid a full statement on the Table of the House giving views of the Government on the observations made in the Audit Report[45]. This is the first occasion when the Government have made known their views on the Audit Report before the matter was considered by the Public Accounts Committee. In this connection the Speaker made the following observation in the Lok Sabha on 28th April, 1960[46].

[41]On certain occasions Audit Reports were examined by the Public Accounts Committee even before these were laid on the Table of the House in accordance with the following decision given by the Speaker on 24th November, 1950;
"I do not see the point in stricking to the formality of examination after the reports are laid before Parliament. It appears to me that as hitherto the Public Accounts Committee may begin the examination of Reports and Accounts as soon as available so that the Committee wi'l have more time and greater leisure for doing their work but they should not submit any report thereon to the House before the accounts are laid on the Table of the House."

[42]*See* Hansard, House of Commons Debates 11-4-60, cc 871—76.

[43]*See* L.S. Debates dated 9-4-60. cc. 10656-57.

[44]*See* L.S. Debates dated 9-4-60. cc. 10803 & 10819.

[45]*See* L.S. Debates dated 28-4-60, c. 14399.

[46]*See* L.S. Debates dated 28-4-60, c. 14406.

"The procedure is that the Audit Report goes before the Public Accounts Committee which examines the papers As the matter was referred to in advance on the floor of the House, it is just and proper that the Government with respect to whom observations have been made in the Audit Report, must have as early an opportunity to explain its position as possible, lest there should be only one version. So there is nothing objectionable in this."

In the U.K., the Comptroller & Auditor-General is not responsible for auditing of accounts of public corporations and therefore he has no access to the relevant books and makes no report on their accounts[47]. His advice to the Committee on these accounts is therefore necessarily restricted and often the Committee have to depend upon themselves for the examination of such accounts. In India, too, the Comptroller & Auditor-General is precluded from auditing the accounts of some of the corporations or statutory bodies and the Committee of Public Accounts have to proceed on the basis of the audit reports submitted by the commercial auditors whom the statutory corporations may have appointed as their auditors.

In the U.K., each year a number of accounts are considered without witnesses being summoned to answer for them. It is the ideal that the programme should be arranged so that, over a period of years, the Committee should have the opportunity to examine the accounting officer for every account, but the accounts are now so numerous that a greater degree of selection is exercised. Unless the Comptroller & Auditor-General makes some comments on the accounts in his reports, not even the accounts of some of the major departments are examined every year with a witness present.

[47]In the U.K., Nationalised Industries, till the enactment of the Finance Act, 1956 (Section 42), were required primarily to raise the necessary capital in the market usually by issue of debentures and were responsible for servicing them. The Treasury had only to guarantee the payment of interest and the redemption of debentures. Under the Finance Act, 1956, the borrowing powers of the Nationalised Industries other than National Coal Board) have been curtailed and they are expected to take advances from the Ministries concerned to the extent they had powers to borrow by the issue of Stock, and the Treasury in turn is expected to issue to the Ministries out of Consolidated Fund such sums as are necessary to enable them to make requisite advances. In India, on the other hand, Public Undertakings are financed largely, if not entirely, by the direct investment of public funds from the Consolidated Fund of India.

A provisional programme usually prepared by the Comptroller & Auditor-General in the light of his knowledge as to what is likely to be contained in the report on his accounts is submitted by him to the Chairman of the Committee. The Chairman finalises the programme after taking into account his own ideas and also the current interest of the Members. Accounts which were taken without a witness in the previous session and which it is now proposed to take with one or *vice versa* are underlined. Any new accounts which have not been taken before are typed in capitals.

In India, the programme is prepared by the Secretariat of the Committee after the Audit Reports and Accounts have been presented to the House. The provisional programme, after approval by the Chairman, is circulated to the Members and the concerned Ministries. All accounts with the exception of those few which relate to minor departments are usually examined by the Committee each year. Thus all Heads of Departments have to appear before the Committee every year.

In the U.K., before the commencement of each meeting of the Public Accounts Committee, a conference is held in the room of the Chairman of the Committee. At this conference, the Chairman, the Comptroller & Auditor-General and the Clerk of the Committee are present. The conference discusses the important points which should be raised with the witnesses regarding examination of particular accounts. This is always a confidential meeting and no records are kept nor circulated to any one. This meeting gives the background to the Chairman in the light of which the witnesses are examined. Other Members have no such knowledge and therefore most of the examination of the witnesses is done by the Chairman and most Members appear "rather in the role of a juror who come later to some conclusion on the matters at issue".

In India, the Comptroller & Auditor-General prepares a list of important points arising out of the accounts and his comments thereon and this list which is marked 'confidental' is circulated to the Chairman and the other Members of the Committee. The Secretariat of the Committee, under the direction of the Chairman, prepares a further list and it is also circulated to the Members of the Committee. The latter list supplements the list prepared by the Comptroller and Auditor-General. Thus the examination of the witnesses is conducted by the Chairman and Members alike and

Members feel the satisfaction of having participated to the full in the discussions[48].

In the U. K., the Comptroller & Auditor-General attends the meetings as a witness when evidence is being taken by the Committee. He does not sit next to the Chairman; but sits, at the other end of the table, opposite to the Treasury officials, and intervenes in the discussion only when the Chairman asks him to clarify a point or some information is required from him. He does not put any question to the witnesses nor makes any comments or observations on the evidence given by a witness.

In India, on the other hand, the Comptroller & Auditor-General sits on the right hand side of the Chairman. He continuously holds consultation with the Chairman as the evidence is proceeding and very frequently asks questions from the departmental witnesses and also makes comments and observations in the course of such evidence. The Comptroller & Auditor-General is accompanied by his officers[49] who also sit alongwith him or behind him and continuously assist him with paper, information, etc.

In the U.K., no formal procedure has been laid down governing the participation of the Comptroller & Auditor-General in the draf-

[48]Quite recently the Public Accounts Committee has adopted a procedure of dividing itself into working groups. Each such group is entrusted a particular subject. The members of the group study the papers on the subject and hold preliminary meetings among themselves to discuss points of importance on which questions might be put to the witnesses. At such meetings, the Comptroller & Auditor-General or his officers are also present to assist the members.

[49]Para 19 of the Audit and Accounts Order, 1936, as adapted, reads as follows :

"19. Anything which under this Order is directed to be done by the Comptroller and Auditor-General may be done by an officer of his Department authorised by him, either generally or specially :

Provided that except during the absence of the Comptroller & Auditor-General on leave or otherwise an officer shall not be authorised to submit on his behalf any report which the Comptroller & Auditor-General is required by the Constitution to submit to the President or the Governor."

Accordingly, the Comptroller & Auditor-General has appointed several Accountants-General and Directors of Audit as his principal audit officers who act on his behalf and this explains the reason for their presence at the meetings of the Public Accounts Committee. In fact, the Audit reports are signed by the Accountant-General or Director of Audit concerned and counter-signed by the Comptroller & Auditor-General.

ting of the Committee's report. The Committee are however free to call upon the Comptroller and Auditor-General and to make use of his help in any way they think proper.

In India, when a draft report is prepared by the Secretariat of the Committee under the direction of the Chairman, it is sent to the Comptroller & Auditor-General in advance for factual verification and when the report is considered by the Committee, the Comptroller & Auditor-General or his representative is always present to assist the Committee. His presence is recorded in the proceedings of the Committee. The Comptroller & Auditor-General is, as usual, accompanied by his officers on such occasions also.

In India, the minutes of the Public Accounts Committee are drafted by the Secretariat of the Committee and after approval by the Chairman are circulated to Members. The minutes form part of the Report of the Committee and supplement the recommendations contained in the main Report. The documents supplied to the Committee are also appended to the Report of the Committee; but the evidence given orally is not printed[50] nor laid on the Table of the House. The minutes are therefore of a detailed character and embody a good summary of the discussions without mentioning actual questions and answers or the names of the members or the witnesses. In the U.K., on the other hand, the minutes are very brief and do not purport to summarise the evidence given before the Committee. The evidence is printed *verbatim* and presented to the House along with the Report. Neither in India, nor in the U.K., the Comptroller & Auditor-General is concerned with the drafting of the minutes of the Committee.

In the U.K., it is customary on the retirement of the Comptroller & Auditor-General and on the appointment of his successor to include a special paragraph in the Committee's final report. In

[50]Before the Second World War, the evidence used to be printed. It was stopped during the war as an economy measure. Since then except on two occasions (1952-53 and 1966-67) the evidence has not been pritned nor laid on the Table. The Committee have examined, this matter from time to time; but have not yet made up their mind to make it public. Apart from printing difficulties, which have now eased the main consideration for keeping the evidence confidential is the creation of a psychological atmosphere in the mind of a witness to say freely and frankly what he feels about a certain matter placed before him.

India, the Committee includes a paragraph in each of its reports every year expressing its thanks to the Comptroller & Auditor-General for the valuable assistance rendered by him in the deliberations of the Committee.

In the U.K., periodically an epitome of the reports of the Public Accounts Committee is brought up to date by the Comptroller & Auditor-General. It is customary for the Chairman of the Public Accounts Committee to move in the House for a return containing the epitome of the reports from the Committee and of the Treasury minutes thereon with appendix and index. Before doing so, the Chairman writes to the Financial Secretary to the Treasury asking him to inform the Speaker that he has no objection to the motion. In India, a similar epitome is brought out by the Comptroller & Auditor-General. This epitome is kept in the Library of the Public Accounts Committee and is not laid on the Table of the House.

In India, six copies of all papers circulated to the Members of the Committee are usually forwarded to the Comptroller & Auditor-General and the Accountants-General or Director of Audit concerned. Any fresh note or memorandum which the Committee desires is invariably sent by the witness through the office of the Comptroller & Auditor-General, who check the facts contained in the memorandum from the audit point of view before it is submitted to the Committee. The idea is that the facts should be settled between the Administrative Department and the Audit Department before they are placed before the Committee. Copies of the final memoranda which are circulated to Members of the Committee are also sent to the Comptroller & Auditor-General. The Chairman and the Committee have often commented[61] on this

[61] *See* introduction to 3rd & 4th Reports of the Public Accounts Committee (Second Lok Sabha).
It may be stated in this connection that in order to understand this difference in procedure the position in the U.K. is that as far as possible complete information is given to the Public Accounts Committee by the departmental witnesses in oral evidence and there is seldom any occasion for them to submit any notes in writing. The departmental representatives generally attend the meetings of the Public Accounts Committee by themselves (and with one or two Assistants, necessary) and carry important and relevant papers only. In India, on the other hand, the departmental representatives, despite the fact that they attend the meetings with a larger retinue of staff, who carry voluminous records with them, do often ask for time to explain their position in writing by submitting notices later on.

and also criticised the delays in submitting written material. Often the Committee has had to delay its report for this reason.

In the U.K., Supply is granted by the terms of the resolution of the House to "Her Majesty". Ways and Means are granted by the Appropriation Act in the form of an authority to the Treasury to make the necessary issue from the Consolidated Fund. Before the grants become available to the various departments, a Royal Order "is issued by which the Sovereign authorises the Treasury to issue the necessary money to the persons charged with the payment of services", the order being limited to the amount of Supply actually granted by Parliament at the time of its issue. The Royal Order quotes the amount granted in each Supply resolution and the date on which it was agreed to by the House of Commons on report. But before it can draw the money from the Consolidated Fund to make the issues to the various Departments, the Treasury must receive from the Comptroller and Auditor-General credits on the Exchequer Accounts at the Bank of England.

The Treasury therefore sends to the Comptroller & Auditor-General a demand every afternoon for the issue of such sums as are needed to finance the many activities of the Government. The Comptroller & Auditor-General examines these demands and if he is satisfied that they are in accordance with parliamentary authority issues credit notes authorising the Banks of England and Ireland to issue the money. The procedure today is exactly the same as that laid down by Parliament over 90 years ago[52].

In India, by the provisions of an Appropriation Act, the money is granted to the President. After the relevant Appropriation Act comes into force, the Ministry of Finance communicate to the administrative departments (and the Accountants-General concerned) in the shape of a lumpsum as primary units of appropriation the sum granted under the Appropriation Act to that Department to defray its expenses on Services & Supplies during the course of the year. The Administrative Departments then make arrangements for distributing the sanctioned funds, where necessary, among the controlling and disbursing authorities subordinate to them. The Accountant-General is required to render such assistance in the distribution of grants as may be settled in each case[53]. No

[52]Sections 14 and 15 of the Exchequer & Audit Department Act. 1866.
[53]General Financial Rules, Vol. I Chapter V.

procedure[51] has yet been devised whereby, as in the U.K. the Comptroller & Auditor-General in India has been vested with control over the issues from the Consolidated Fund. The responsibility for drawing the money from the Reserve Bank which maintains the Consolidated Fund on behalf of the Government of India and for watching the progress of expenditure is laid down on the authority administering a grant and for keeping the expenditure within the grant. When the Appropriation accounts are drawn up at the end of the year, then only the Comptroller & Auditor-General is in a position to know whether any authority has exceeded the grant, or whether the Government as a whole have drawn in excess of the sum specified in the Appropriation Act from the Consolidated Fund of India.

A question is sometimes raised as to what is the status of the Comptroller and Auditor-General before the Public Accounts Committee. In the U.K. the Comptroller and Auditor-General is a witness before the Committee. He is often present at the sittings of the Committee because the Public Accounts Committee, when it considers his Audit Report, may want an explanation on any matter included in the Report either *suo motu* or on a point raised by a departmental witness. The Comptroller and Auditor-General therefore does not take part in the proceedings, and answers only when he is asked any question. Although by custom for over a hundred years the position of the Comptroller and Auditor-General is now well recognised in the U.K., there is no ambiguity or mistake about his legal status or the position under which the Public Accounts Committee can summon him. The power of the Public Accounts Committee to summon him comes under its general power to call for papers, persons and records.

Under Article 105 of the Constitution of India the powers of the Parliamentary Committees in India are the same as those enjoyed by the Parliamentary Committees in the U.K. at the commencement of the Constitution. Since the Public Accounts Committee in the U.K. has the power to call for papers, persons and records which power has also been independently given to the Public Accounts Committee in India under Rule 270 of the rules of

[51]On the coming into force of the Constitution in 1950, the designation of the Auditor-General was changed to Comptroller & Auditor-General as it was intended that, as in the U.K., he should also be responsible for control over exchequer issues.

Procedure and Conduct of Business of Lok Sabha, the Public Accounts Committee in India can call the Comptroller and Auditor-General and he is, constitutionally speaking, a witness before the Public Accounts Committee. According to the convention, however, both in the U.K. and India the Comptroller and Auditor-General has acquired the position of more than a mere witness and he acts as an expert guide to the Public Accounts Committee.

9

THE BUDGET IN PARLIAMENT

THE first thing to know about the budget is that the powers of Parliament in regard to public finance, *i.e.* taxation and expenditure, and the procedure that is to be followed in Parliament, are laid down in the Constitution itself. You may perhaps be surprised to learn that when the draft Constitution was first introduced in the Constituent Assembly by the Drafting Committee, it did not contain the fundamentals of financial principles or procedure. For instance, the major provision that no tax shall be levied or collected except by authority of law was not in the draft Constitution. Similarly there was no provision regarding Consolidated Fund, Vote on Account, Exceptional Grant, Appropriation Bill, Charged Expenditure, to quote a few more examples.

I remember the day in May 1949 when the financial clauses of the draft Constitution came for consideration in the Constituent Assembly, Dr. Ambedkar was somewhat uneasy about the matter. He felt that the draft Constitution was incomplete and defective in this regard. He had a talk with the then Speaker, Shri Mavalankar, who after examining the relevant provisions of the draft Constitution advised Dr. Ambedkar to have their consideration postponed until the matter was thoroughly examined. Both Dr. Ambedkar and Shri Mavalankar asked Shri Kaul, then Secretary of Constituent Assembly (Legislative), to prepare a memorandum on the British financial procedure and to make his suggestions with regard to their applicability to India. There was argument whether we should adopt the British, American or the Continental system of financial procedure because essentially the three systems are quite different from one another. They differ in essentials as well as in details.

After a good deal of discussion it was decided that we should continue to follow the British system as we had previously worked it and understand it better. You will thus see that our Constitution contains the main financial provisions identical with those existing in the United Kingdom. Having said this, it does not mean that we are following that procedure in all respects. The fundamentals, of course, we have taken from the British Parliament, but in many respects our procedure differs from the British procedure.

In order to understand our financial provisions and procedure, it is necessary to understand the British procedure first. You must have all read that the British Constitution has in the main evolved as a result of long struggle between the Commons and the King over the power of the purse. You have to go the earliest times, to the days of Magna Carta to find out the roots of the British Parliamentary control over the public finance. Chapter 12 of the Magna Carta lays down :

> "No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the City of London."

Of course, the Magna Carta did not give the people the right of control over taxation, but it laid foundations on which that right has been steadily built. In our text-books at school we have read mostly about the power of Parliament in regard to taxation : no tax without consent, no tax without representation of grievances and things like that. But if you read the financial history of England, you will observe that the people had also laid claim to control over expenditure as well as appropriations from the earliest times. The early resolutions of the Parliament from the 13th century onwards recorded in the rolls or proceedings of Parliament give in an embryonic from the present system. For instance, whenever money was voted the Commons stipulated that the proceeds of such and such tax shall be utilised for a specific purpose say, Napoleonic Wars only. There you see the seeds of appropriations which we have today, *i.e.* whenever Parliament votes a grant it gives that grant for a specific purpose and Government cannot spend it on any purpose other than the one indicated by Parliament. Similarly if you examine the question of accountability to Parliament which we have

today in a modern form, you will notice that it also dates back to the 13th or 14th century because after the money was spent, Parliament in certain cases called for an account from the King as to how the money was spent.

Mr. Paul Einzig in his book, *The Control of the Purse*, says : "It is an inescapable historical fact that the House of Commons owes its origin and early development almost entirely to its 'sordid' financial functions. Parliaments in most other countries originated as a culmination of movements aiming at political freedom—freedom of speech, freedom of the Press, independent administration of justice, freedom of religious worship, freedom from alien domination. The British Parliament, on the other hand, owed its origin and its existence during the vitally important formative period between the 13th and 17th centuries almost entirely to the Englishman's age-old determination not to be taxed without his consent". Gladstone in a speech at Hastings on the 17th March, 1891, summed up the position as follows ;

> "The finance of the country is ultimately associated with the liberties of the country. It is a powerful leverage by which English liberty has been gradually acquired. If the House of Commons by any possibility lose the power of the control of the grants of public money, depend upon it, your very liberty will be worth very little in comparison. That powerful leverage has been what is commonly known as the power of the purse—the control of the House of Commons over public expenditure."

The British financial procedure has undergone three fundamental phases. I am not talking of the details because the details have been changing almost every decade, but of the landmarks only. The first phase dates from the 13th century to 1688 and the second from 1688 to 1856 when Gladstone became the Chancellor of the Exchequer, and the third phase covers the period from 1856 to the present day. The procedure that exists to-day in England is essentially the same as that laid down in 1856 and after. Gladstone was a great reformer in the field of financial procedure. It was he who introduced the concept of a Public Accounts Committee. It was in his time that the office of the Comptroller and Auditor-General was created and the Exchequer and Audit Departments Bill of 1866 was passed. These institutions which are regarded as modern and a *sine qua non* of the British financial system are a little less than 100 years old.

We are to-day familiar with the terms like 'Money Bill', 'Consolidated Fund', 'Appropriation Bill', 'Supplementary Grant', 'Excess Grant'' 'Vote on Account' and so on. All these concepts were not evolved by any set of administrators or parliamentarians sitting in isolation or contemplating in abstract. They were all evolved in the course of centuries as and when concrete cases or difficulties arose and a result of a continuous struggle between the ruled and the rulers. Hallam observes in his 'Constitutional History' that the subjects of Henry VII, who would have seen an innocent man led to prison or the scaffold with little attention, twice broke out into dangerous rebellions as a result of their grievances over taxation. To quote Paul Einzig again, "The Civil War did not have its origin in any despotic interference by Charles I with individual freedom and human rights but in his attempts to tax his subjects without their consent. John Hampden's refusal to pay an unlawfully imposed tax played the same part in the English Revolution....And the final victory of the House of Commons over the House of Lords, ...was fought and won, not over the vetoing of Bills dealing with religion, abstract constitutional rights or other fundamental political issues but over the vetoing of a Finance Bill."

British financial procedure rests to-day mostly on conventions and practices, resolutions of the House of Commons and certain Acts of Parliament such as the Parliament Act of 1911, the Exchequer and Audit Departments Act of 1866, as amended from time to time, etc. We have got all the concepts of the British financial system in our Constitution. Of course, in certain cases where basic principles only have been enunciated in our Constitution, the details have been left to be regulated by Acts of Parliament or the Rules of Procedure and Conduct of Business in Lok Sabha. So, whenever we want to understand the basic provisions in our Constitution, we have to look to the British procedure and study the historical evolution of that procedure, the strength of its usage and the need for it in modern times. Of course, we are free to make our own changes within the limits laid down by our Constitution and our Parliament has made changes in many respects. I shall have occasion to refer to some of the differences between the British and our systems later in my lecture to-day.

The most important, I should say the cardinal principles, of the British financial procedure is that no proposal, whether relating to a tax or expenditure, is brought before the House of Commons unless

it is accompanied by a recommendation from the Crown. This vital part of the procedure is based on an ancient resolution of the House of Commons passed in 1707. The Resolution which is embodied in Standing Order 78 of the House of Commons reads as follows :

> "This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of the money to be provided by Parliament, unless recommended from the Crown."

I may say that this is the foundation-stone on which the whole superstructure has been built because the Resolution or the Standing Order vests the initiative entirely in the Government to bring financial proposals before the House of Commons and the private Member has absolutely no right of initiative in this matter. The significance of this becomes all the more important when we turn our attention to the United States of America or Europe. In America or the Continental countries any Member can introduce any proposal, having financial implications, without restriction and we see that very often the proposals of the Government are substantially reduced or altered by the House on the initiative of private Members. Situations have arisen in those countries when Governments have found it difficult to manage the financial affairs of their States with reasonable efficiency in these circumstances and quite often the Governments have had a fall because of their tussle with the private Members over the size of the estimates to be voted by Parliament. On the contrary, such is the strict hold of the Government in the U.K. on the limits of estimates of Government expenditure that for the last 36 years, the House of Commons has approved the annual estimates in precisely the same form in which Governments have presented them to the House. Of course, our Parliament follows the same procedure. Our Constitution makes ample provision that no proposal involving a taxation measure or expenditure can be brought before Lok Sabha unless it is recommended by the President *i.e.*, unless Government has considered and decided to submit it for the approval of Lok Sabha.

Now, I come to the second important Resolution of the House of Commons which was passed in 1707 and is now embodied in Standing Order 79 of the House of Commons :

> "This House will not proceed upon any petition, motion or bill, for granting any money, or for releasing or compounding any

sum of money owing to the Crown, but in a committee of the whole House."

Although this is another important part of the British financial procedure, we have departed from this in our Lok Sabha. We have no Committee of the Whole House. I shall briefly explain why this Resolution has not been embodied in our Constitution.

In the United Kingdom, as you must have all read, in the olden days the Speaker used to be the King's nominee or the King's friend. It was he who was required by the King to facilitate passage of his taxation and expenditure proposals in the House of commons. The Commons, therefore, always suspected the Speaker of his loyalty to the King and their inability to discuss in his presence freely and frankly the issues involved. The Commons in those days regarded the Speaker as an enemy of the House and they gradually resolved to discuss financial matters in his absence. This lack of trust and confidence in the Speaker led the Commons gradually to move each time when proposals for the grant of supplies were taken up that 'the Speaker do leave the Chair'. Having thus got him out, the House proceeded with the consideration of their financial business in an atmosphere of freedom. Through the centuries the role of the Speaker has entirely changed. He is no longer the King's nominee. He is elected by the House of Commons from amongst themselves. He is the spokesman of the House. He occupies a position of utmost trust and confidence. He is regarded as an impartial umpire whose rulings have to be accepted without question. But the Commons still get him out of the Chair whenever they consider any financial business. The historical fiction is still maintained. On the motion that 'the Speaker do leave the Chair' having been passed, the House resolves into a Committee and the Government submits its estimates of expenditure and proposals for taxation to the Committee.

At the beginning of each session the Commons appoint two Committees, *viz*, the Committee of Ways and Means and the Committee of Supply, These Committees are nothing but the whole House itself. They are Committees of the whole House without the Speaker. It is, however, not the House but a Committee over which one of the Members, called the Chairman, Ways & Means, presides. All the budgetary proposals are introduced, discussed and voted in these two Committees. The decisions of the Committees in the form of Resolutions are later on reported to the House.

....The main work is done in the Committees and the House gives its formal approval.

But we have departed from this procedure because, to our thinking, it was absolutely unnecessary to be a slave to a meaningless ritual. We are a new democracy and our Speaker did not start as a friend of the King or of the Government. He is an independent member. He has inherted all the powers and prestige of any Speaker of any independent Parliament of the world. Therefore, as we did not feel that the House would be influenced in any way in the discharge of its duties in the presence of the Speaker, we have not considered it necessary to have a Committee of the whole House. Our Budget is presented to the House and the House considers, discusses and passes it without going through a Committee of the Whole House.

In the United Kingdom, the first intimation of the presentation of the estimates and introduction of financial proposals in the House of Commons is contained in the Queen's speech which she delivers at the commencement of a new session of the Houses of Parliament. The speech includes a short paragraph which is addressed specifically to the Members of the House of Commons. The paragraph runs as follows :

"Members of the House of Commons :

Estimates for the public services will be laid before you in due course."

This is the first intimation that is given to the House of Commons. Immediately after the commencement of the session, the House of Commons appoints in a motion two Committees of the Whole House. as I told you before—the Committee of Ways and Means and the Committee of Supply. The Government present their estimates of Expenditure to the Committee of Supply sometime in late January or early February. All the estimates are not submitted at once. They are submitted piecemeal as and when ready upto the end of March. The taxation proposals are submitted to the Committee of Ways and Means sometime in April. No date is fixed for the submission of these proposals—Government choose any date between the 6th April and 6th May. They make their choice depending upon the Easter Holidays and other considerations. In India all the proposals, both relating to estimates of expenditure and taxation are introduced at the same time on the fixed date at

the fixed time. By practice and convention, the last working day in February has been fixed for the presentation of the Budget. The date is not binding and the President can make a change if he so likes. The Finance Minister begins his speech at 5 P.M. and at the end of his speech he presents a statement of estimated receipts and expenditure of the Government of India, called the Annual Financial Statement. The estimates of expenditure show reparately the sums required to meet the charged expenditure as well as other estimates of expenditure proposed to be met from the Consolidated Fund of India. The estimates also distinguished expenditure on revenue account from other expenditure. The Finance Minister also introduces a Bill to give effect to the financial proposals contained in his speech. It is commonly called 'the Finance Bill'.

While in the United Kingdom the taxes become effective under the Provisional Collection of Taxes Act after the Committee of Ways and Means has passed the necessary Resolutions based on the proposals contained in the speech of the Chancellor of the Exchequer immediately after his speech, in India, the taxes become effective immediately on the introduction of the Finance Bill because our Provisional Collection of Taxes Act provides that if a declaration has been embodied in such a Bill, the taxes shall become effective immediately and shall remain in force for two months, unless, in the meanwhile, the Bill has been passed. In the United Kingdom, on the other hand, the taxes can be provisionally collected for four months under the terms of their Provisional Collection of Taxes Act. Here again, we have departed from the procedure of the House of Commons. We do not have the system of money resolutions as it obtains there. In the House of Commons the drafting of the money resolutions has become complex because if they are narrowly worded, then in practice they create difficulties. On the other hand, if they are too broadly worded the House of Commons is averse to impose taxes in general terms. Here in India it was considered that it would be much simpler and more precise if the Finance Bill which had textual exactitude was introduced and taxes were provisionally collected within the limits of the provisions of that Bill.

The Provisional Collection of Taxes Act governs the time-table that should be adopted for the completion of financial business both in the House of Commons and in India. In the U.K., the House

of Commons gets nearly six months to consider the estimates of expenditure, and four months to consider the taxation proposals. In India, Parliament gets only two months to consider both the estimates of expenditure and the Finance Bill. The Budget is introduced on the last day of February and it must be passed a few days before the end of April.

The Financial Year begins on the 1st of April and all the previous supplies which have been granted upto 31st March lapse on that day. Therefore, in order to carry on the Government in the beginning of the new year until the estimates have been passed by the House and the Appropriation Bill assented to by the President, the House passes a vote on account. This vote is approximately one-twelfth of what the Government have asked for in the estimates for the whole year. The vote on account is passed without discussion except to the extent of seeking elucidation of any extraordinary provision. For instance, if the Government have asked for more than 1/12th under any head and the explanation is not satisfactory, any Member may ask for an explanation and if he is not satisfied, ask for a debate which is usually granted. In India, a vote on account is for one month whereas in the United Kingdom the vote on account is for four months for obvious reasons.

The time-table for the completion of financial business in Lok Sabha is proposed by the Government and is considered and approved by the Business Advisory Committee of the House. Under the Rules the Speaker has the power to allot time for the completion of any financial business and if a doubt arises on the classification of any business as financial business, the decision of the Speaker is final. The Speaker, however, in practice, accepts the advice of the Business Advisory Committee of which he himself is the Chairman. The time-table is announced to the House in advance and is also intimated to the Ministries.

There is no discussion of the Budget on the day it is presented to the House. After a few days of the presentation of the Budget, Lok Sabha discusses the Budget in full, *i.e.*, both the expenditure as well as taxation proposals. No motion is moved nor is the Budget submitted to the vote of the House at that stage. It is a general discussion which may be termed as discussion on economic and financial policy of the Government. The Finance Minister makes a general reply at the end of the discussion. The discussion lasts 4 to 5 days in Lok Sabha.

Unlike the Parliament in the U.K., the Budget, although it is presented to the Lok Sabha, is simultaneously laid on the Table of the Rajya Sabha at the end of the Finance Minister's speech in Lok Sabha. In the United Kingdom the Budget is presented to the House of Commons only and the House of Lords has nothing to do with it. Therefore, the Lords do not discuss the Budget as such although they discuss on an independent motion the financial policy of the Government or any other matter of importance arising from the Budget. The only time that they discuss the Budget directly is on the Appropriation and the Finance Bills. The House of Lords is required to pass within one month a Bill which is certified as a Money Bill by the Speaker of the House of Commons. If the House of Lords does not pass such Bill within the time limit, it is presumed that that House has concurred in the Bill and it is then submitted to the Queen for her assent.

Th re are some variations so far as India is concerned. As I said before, the Budget is laid on the Table of Rajya Sabha. The Rajya Sabha has a general discussion of the Budget for two or three days and the Finance and Appropriation Bills are sent to Rajya Sabha after they have been passed by Lok Sabha. The Rajya Sabha discusses these Bills within the time schedule proposed by the Government and in any case that House has to discuss and return the Bills within 14 days of the date of receipt by them and if they do not return the Bills within that period, Lok Sabha assumes that the Rajya Sabha has concerned in the Bills and presents them to the President for his assent. Rajya Sabha has no right of making amendments to the Money Bills. They can only make recommendations to Lok Sabha and it is for the Lok Sabha to accept or not to accept these recommendations they may amend the Bill accordingly and send it to the President for his assent.

After the discussion on the Budget in both Houses, Lok Sabha then proceeds to examine the estimates Ministry-wise. Rajya Sabha does not do any detailed examination of estimates because it has no such power under the Constitution. Lok Sabha examines the estimates throughly and much of the time of Lok Sabha is taken on the discussion of the estimates. The Demands for Grants are presented Ministry-wise and, therefore, it is easy for the House to consider the Demands Ministry-wise. Along with the Budget papers, Explanatory Memoranda are supplied by the Government as a matter of course. Also Annual Reports for each Ministry are presented

to the House. These Reports describe the working of the Ministry during the past year, their important achievements, their proposals and programmes for the next year and justification in broad terms for the additional monies asked for. The Annual Reports of the Ministries are being submitted to the House since 1951. Prior to that no such reports were presented. Similar reports are not presented in the U.K. These reports are very helpful to Members and it is on the basis of these Reports as well as the Reports of the Public Accounts Committee and the Estimates Committee that they make criticisms.

During the discussion Members move cut motions. The idea behind the cut motions is that Members should specify the points on which they wish to focus attention during the discussion.

Cut motions are of three kinds. One is Disapproval of Policy Cut, the second is Economy Cut and the third is the Token Cut. There are prescribed forms in which the three cut motions are moved. Whenever a Disapproval of Policy Cut has to be moved, the motion is, "that the amount of the demand be reduced to Re. 1". Whenever an Economy Cut is moved the motion is, "that the amount of the demand be reduced by a specified amount" and with regard to Token Cut, the form of the motion is, "that the amount of the demand be reduced by Rs. 100." Each motion specifies the points in precise terms which a Member wants to discuss, e.g., when the discussion is on a Policy Cut, a member can advocate an alternative policy. So far as Economy Cut is concerned, the speech is confined to the discussion as to how economy can be effected. As regards Token Cut, the discussion is confined to the particular grievances specified in the motion. The Speaker decides on the admissibility of each cut motion according to rules and practices before he puts it to the vote of the House. The point, however, to remember is that in Lok Sabha we have hundreds of cut motions on the various Ministries Not all these cut motions are discussed. A few are moved and a fewer still are ultimately put to the vote of the House. Historically speaking when the Government was not responisible to the Legislature, nationalist opposition made much use of cut motions in order to ventilate their grievances, to attack the policy of the Government and to indicate the lines along which economy could be effected. This was, therefore, a very effective weapon in their hands when the Budget was under discussion. There is a case in which, I remember, a cut motion moved

by the opposition was passed by the House, and the Government, though they were not bound by the vote of the House on financial matters, did accept in this particular case the decision of the Central Assembly, and, in order to give effect to that decision, the Departments which were affected by the cut motion disappeared overnight because no money was voted for their continued existence. The historical hangover still persists and although the Members of the Congress Party do not move any cut motions because the Party has issued directions to its Members not to bring cut motions as that would mean disapproving the policy of their own Government, nevertheless, Members of the Opposition do table hundreds of cut motions. Although these cut motions lend to increase the work both in the Secretariat of the House as well as in the various Ministries which are required to prepare briefs for the Ministers, to look into hundreds of local grievances, to collect data, facts and other material for the use of the Ministers at short notice, the cut motions generally do serve a very useful purpose. They bring to light many of the defects that might go unnoticed because in the vast administration of this country, it cannot be said that the whole administrative machinery is efficient, unbiassed and responsive to the grievances of the public. Members who come from all parts of the country and have intimate contacts with the public do gather cases of mal-administration, inefficiency and the like and when they bring them on the floor of the House, the grievances do receive consideration in the highest quarters at the hands of Ministers and senior officials of the Ministry. Dr. John Mathai, when he was Finance Minister, often said that by means of questions tabled by Members and during discussions on the Budget, he gathered such a lot of information about the working of the Departments that he was able to locate defects and take such remedial action as was possible. He said that, but for such parliamentary opportunity he might never have come to know of the numerous details.

If a cut motion is carried in the House, it has a serious consequence on the fate of the Government. A defeat on a financial measure is a major defeat for the Government and the Goverment will have to consider seriously whether it should continue in office. Normally, it will resign.

You may be surprised to know that in the United Kingdom nowadays cut motions are rare. The explanation is mostly psychological and political. In the present-day developing society there

is need for more expenditure so that the nation-building processes may continue at a rapid rate. Members, therefore, plead during discussions that more money should be found for this service or that service. Members feel that if they gave notices of cut motions or moved such cut motions, a story might go round their constituencies that the Members were not pressing the Government for allotting more money for works in their areas but instead that they were asking for cuts. Such a psychological effect on the constituents would be dangerous for the Member's position in his constituency. In their speeches in the House, however, Members do indicate alternattve policies or possible economies that could be enforced and also represent their grievances. The only change now is that a formal cut motion is not as a rule moved. I am soure that when our own electorate becomes more educated and takes more interest in the Parliamentary Procedure, the Members may follow the same practice as in the U.K. As it is, Members of the Congress Party follow the same proccdure. They do not move cut motions, but they do speak on the demands when they bring forth their grievances as well as suggest possible economies.

At the end of the discussion on the demands relating to a Ministry, the demands are voted and grants made. After all the grants are made for all the Ministries, on the last day allotted for the discussion of demands, any residuary demands for which no separate time has been allotted are put to the vote of the House at the fixed hour of the last day, and, in parliamentary technology, it is called "guillotine." An Appropriation Bill which embodies the grants made by Lok Sabha is then introduced. The Appropriation Bill is considered and passed like any other Bill save that normally no discussion is permitted unless the Member who desires to have a discussion, shows to the satisfaction of the Speaker that he has some new points to discuss which have not already been covered by the discussion on the Budget and the Demands relating to Ministries. Even then such a discussion must conclude within the time allotted by the Speaker and the Bill passed within the prescribed time-table.

The passage of the Appropriation Bill is necessary because no money can be withdrawn from the Consolidated Fund unless it is authorised by law. Therefore, monies can be withdrawn from the Consolidated Fund only after the Appropriation Bill has been passed.

In the U.K., on the other hand money can be withdrawn from the Consolidated Fund after a Money Resolution has been passed by the House of Commons. In the U.K., they too pass an Appropriation Bill, but that is much later, in order to give statutory effect to the Money Resolution passed by the House.

The theory is that after the monies have been voted by the House and the total amount of expenditure required for the Government is determined, the House will have to consider the ways and means of raising the revenue required to meet that expenditure. This is achieved by passing the Finance Bill which, I told you earlier, is introduced at the time of presentation of the Budget on the last day. On a motion that 'the Finance Bill be taken into consideration', a Member may discuss matters relating to general administration, local grievances within the sphere of the responsibility of the Government or monetary or financial policy of the Government. Finance Bill is the one Bill where the rule of relvancy in debate is entirely dispensed with. Normaly, on any other Bill Members are required to confine their speeches to the subject-matter of the Bill. In the case of Finance Bill, however, the position is different.

The Finance Bill is a statutory method of giving approval to the taxes proposed by the Government. Therefore, before taxes are voted, Members must be allowed to represent their grievances, for we have the old maxim *viz.*, no taxation without representation of grievances, and Members are permitted to ventilate all kinds of grievances and Government must give satisfactory assurances before the Bill is passed by the House.

After the Finance Bill is passed in the Lok Sabha, it is sent to Rajya Sabha for its concurrence. Since the Finance Bill is invariably a money Bill. Rajya Sabha *has no power to amend it. It can* only make recommendations within 14 days of receipt of the Bill and it is within the power of Lok Sabha to accept these recommendations or to reject them. If Lok Sabha accepts any of the recommendations, as in the case of other Money Bills, it is submitted to the President in an amended form for his assent.

The definition of a Money Bill is contained in Article 110 of the Constitution of India. This, in turn, is based on the Parliament Act, 1911, of the United Kingdom. But, there are some differences between the provisions contained in Parliament Act, 1911, and

our Article 110. The differences are: in India the Speaker has absolute power to declare a Bill as Money Bill. He is not bound to give any reasons. He is not bound to consult anybody. His decision has to be accepted by all and even the Courts cannot go into it. In the House of Commons, the Speaker has to take the advice of two Members of the Panel of Chairman before he certifies a Bill as Money Bill.

Our definition of Money Bill is as little wider than the definition contained in the Parliament Act, 1911. A careful comparison of the two provisions shows clearly that while there is rigidity in the provisions in the U.K., there is some elasticity in the provisions of our Constitution although the language was intended to make it as rigid as in the U.K. Since the Speaker does not record the grounds on which he declares a Bill as Money Bill, it is impossible both in the U.K. and in India to deduce any principles out of the long series of decisions. One can only go by precedents and one precedent is not binding on the subsequent decision by the same Speaker and much less can a decision given by a Speaker be binding on the decisions of subsequent Speakers.

Under Article 117 of the Constitution of India some Bills which attract the provisions of Article 110 can be introduced only in Lok Sabha. These other Bills are generally known as Financial Bills. They are not strictly Money Bills because a Money Bill must contain only provisions which fall to be classified under Article 110. If a Bill contains mixed provisions, that is called a Financial Bill. If, by oversight or mistake, a financial Bill is introduced in Rajya Sabha and a question arises whether it has been correctly introduced in that House, the question under the *Rules of Rajya Sabha has to be referred to the Speaker for his opinion. Though the Chairman of Rajya Sabha is not bound by that opinion, normally he will give due weight to that opinion, for, eventually the Bill has to come to Lok Sabha and that House may decline to proceed with that Bill, if it holds that it was wrongly introduced in the other House.

After the Finance Bill has been passed by the Houses of Parliament and sent to the President for his assent, one may say that the consideration of the financial business by Lok Sabha is complete.

*Rule 161(4) of the Rules of Procedure and Conduct of Business in the Council of States.

But during all the discussions that have been taken place in the House at various stages of financial business, which I have described so far, the discussion has taken place only on questions of policy and broad principles and the House at no time discussed details of estimates. It has not satisfied itself whether the details have been correctly arrived at, whether there is justification for the various amounts shown for the various services and supplies. establishments, projects and schemes and whether the expenses are commensurate with the achievements and also whether the expenditure actually incurred by the Departments of Government has been in accordance with the Appropriation Bill on the purposes specified therein and whether there has been any misappropriation, mis-spending or any financial impropreity.

The Lok Sabha has, therefore, following the model of the U.K., appointed two Standing Committees called the Estimates Committee and the Public Accounts Committee to discharge specified functions. These Committees are important Committees of the House and their recommendations are given considerable weight. All parties are represented on these Committees. They are elected by a system of proportional representation by a single transferable vote and normally representatives of every party, in due proportion to their number in the House, are elected to the Committees. By their work the Committees have established great reputation in the minds of the public, Members and the Government and they are looked upon with awe by the spending authorities who constantly feel that the powerful searchlight of the Committees would be directed on their actions and that they will be accountable for all their actions involving financial implications.

I shall now deal briefly with their functions, powers and duties, their methods of working and action taken on their reports. These two Committees are, as I told you, modelled on the corresponding Committees of the House of Commons though we have departed in certain respects from the procedure obtaining in the United Kingdom. The Estimates Committee is empowered to examine such of the estimates as may seem fit to it. The Committee makes a selection of the estimates which it would like to examine in a particular year. The Committee is prohibited from going into questions of policy behind the estimates. Now and then a question arises as to what is meant by the term 'policy' and what are the matters which the Committee should not normally examine under that heading.

It has been held in the U.K. and in India also that questions of policy mean policies which have been approved by Parliament by law or by resolutions. The term 'policy' is a comprehensive term which may also include executive policy, that is, policy determined by the executive in pursuance of directions given by Parliament. For the purposes of the rules governing the functions of the Estimates Committee the Speaker has made it clear by a Direction that the term 'policy' means policy approved by Parliament and it does not include executive policy. In the latter case the Committee has full right to examine any policies laid down by the executive in the discharge of its functions and the Committee makes criticisms of executive policies. In regard to policies approved by Parliament the Committee normally does not go behind the policy but, if in the course of their examination the Committee find that it is not leading to the desired results and there is waste of expenditure and resoures, the Committee may draw attention to such wastes and advocate the adoption of alternative policies. Therefore, so far as executive policies are concerned, there are no limitations on the powers of the Committee, but, so far as policy approved by Parliament is concerned, the Committee can only comment if there is strong justification that wastes have occurred and inefficiency has resulted in following that policy. It is not correct to say that the powers of our Committee are wider that that in the U.K., though, in the matter of actual examination of the estimates our Committee may be exercising slightly more powers than its counterpart in the U.K. Unlike in India where all the functions and powers of the Estimates Committee are laid down in the Rules of Procedure and Conduct of Business in Lok Sabha and the Directions issued by the Speaker from time to time in the U.K. the Committee's functions and powers are mostly based on conventions. There is still no Standing Order defining the functions of the Committee in the U.K. The only reference to the functions of the Estimates Committee is found in the motion for the appointment of the Committee from year to year. The motion is an old one and is repeated from year to year. It is, in the nature of things, brief and, therefore, no detailed exposition of the functions of the Committee can be embodied in the motion. During the years the Committee has developed its own conventions and all these conventions have steadily widend its powers as the Committee has found from experience that unless it possesses such powers, it will be ineffective. The formal

terms of reference of the Committee are no guide to the uninitiated and if one really wants to know precisely the powers and functions of the Estimates Committee in the United Kingdom, he must study the Reports of the Coommittee from time to time and deduce these Reports the actual powers enjoyed by the Committee. Text-book writers have from time to time attempted to define the functions and powers of the Estimates Committee, but since these books have been written at different times, they contain the postition that obtained when any particular book was written. The Committee has constantly evolved its powers and, therefore, the books become out of date sooner than one can imagine. However, 'Government by Committees' by K. C. Wheare describes in detail the modern procedure of the Estimates Committee and its functions and powers as they are enjoyed by the Committee at the present moment. Perhaps, this book may also go out of date in due course, unless it is kept up to date.

The Estimates Committee makes a very detailed examination of the estimates. Of course, such examination is confined to a few Ministries or projects a year. The examination is so thorough, so intensive and so exhaustive that it is impossible for the Committee to go through all the estimates in a year. The Committee does not confine itself to mere estimates but goes into the question of organisation, the adequacy of personnel. the requisite standards of those personnel and the procedures, systems of recruitment, technical efficiency and in fact all matters which are intimately connected with the estimates. The reports of the Committee are very valuable documents. They are concisely written and contain a number of useful recommendations based on carefully analysed verified data. Every effort is made to make the reports factually correct. For this purpose, opportunity is given to the Ministeries concerned to verify the facts before the reports are actually presented to Lok Sabha

The material on which the reports of the Committee are based is supplied by the departmental witnesses who give evidence before the Committee. They are high officers of the Government who answer questions of the Committee both in writing and orally. The material that is supplied to the Committee is colossal in volume and every effort is made by the Ministries concerned to assist the Committee in arriving at correct conclusions.

The Committee forms a number of Study Committees and examines the materlal thoroughly. The Study Committees also visit outstation offices and projects and form a visual idea of the working of the organisation. Routine questionnaires are forwarded to the Ministries in reply to which they give further material. All these materials form the background information of the Members and then they examine the officers orally. After such examination, further material in writing is called for. It is on the basis of all this information that the reports are written.

The powers of the Committee are that it can send for any person, paper or record. Therefore, the Committee sometimes calls non-official witnesses also and ascertains their expert opinion an any important matter. Any paper which the Committee wants is supplied to it. Of course the Committee does not ask for files or other papers which are not relevant to its enquiry. In exceptional cases, the Committee may be informed that a particular paper is secret or confidential and it is not in the public interest to disclose the contents. Of course, if the Minister certifies that the disclosure of the document is prejudicial to the safety of the State, the Committee does not enquire further and the matter ends. But in the case of a paper for which privilege is claimed on the ground of secrecy and the Committee does not agree, the matter may be referred to the Speaker for his guidance. So far, no such case has arisen because, in the ultimate analysis, the Chairman of the Committee and the Minister have after discussion resolved the difficulty. In all such cases so far the Minister has made the papers available to the Chairman and the Chairman after looking into the papers has explained the position to the Committee. Where the Chairman after perusal of a particular paper has come to the conclusion that it is not of such a secret nature that it should be withheld from the Committee, the Minister has complied with the wishes of the Chairman and the paper has been made available to Committee.

No one except a Member of Lok Sabha can be a Member of the Committee and the Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee. The Committee consists of 30 Members. The quorum is ten.

The Committee works on non-party lines Its decisions are unanimous. There is no system of writing minutes of dissent. Such is the non-party character of the Committee and its objective

approach to the problems before it that very often members of the Congress Party have criticised Government's actions while the members of the Opposition Party have supported them on the facts as disclosed before the Committee.

It is true that the Committee has in some cases made recommendations of a far-reaching character, but, as I told you earlier, such recommendations were arrived at unanimously. The Government is not bound to accept all the recommendations of the Committee though they attach the greatest weight and importance to the report and the recommendations of the Committee. They examine carefully all the recommendations and there must be weighty reasons before they express their inability to implement a recommendation. Sometimes it is also a question of time factor. Though a recommendation may not be immediately acceptable to the Government, but in due course the Government may for various compelling reasons come to the same conclusion and implement the recommendation at a later stage. There are many examples of this nature. For instance, the Committee in its Ninth Report (First Lok Sabha) recommended that the Imperial Bank should be nationalised. The Government were not favourably inclined to this recommendation at the time the report was made and yet we know that a little later Government did nationalise the Bank. Similarly, I can quote many examples and they are all available in the Reports of the Committee if one cares to read them patiently.

After a report is made by the Committee and Government have considered the recommendations carefully, they forward their views to the Committee. In a majority of cases Government accept the recommendations. In some cases Government give reasons why they are not in a position to accept the recommendations and if these reasons are adequate, the Committee normally accept them and recommends that no further action need be taken on them. In some other cases, the Committee may not accept the reasons given by the Government for non-acceptance of a recommendation and the Committee may again reiterate its original recommendation. The report of the Committee on the views of the Government is submitted to Lok Sabha and it is allowed to rest there unless some Member of the House is keen on raising a discussion on a matter which has not been accepted by the Government and on which the Committee has adhered to its original recommendation. The reports as such are not discussed in the House, but they provide a good

deal of raw material for Members to ask questions during question hour or to utilise it in their speeches during debates on financial and other matters. The reports have, therefore, an educative value.

The function of the Public Accounts Committee are to examine the accounts showing the appropriations of the sums granted by the House for the expenditure of the Government of India, the annual finance accounts of the Government of India and such other accounts laid before the House as the Committee may think fit. In scrutinising the appropriation accounts and the audit report thereon the Committee examines to see the monies shown in the accounts as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged and that the expenditure conforms to the authority which governs it and that every re-appropriation has been made in accordance with the provision made by the competent authority. One of the important functions of the Committee is to see that no money has been spent on any service during the financial year in excess of the amount granted by the House for that purpose. The Committee examines with reference to the facts of each case, the circumstances leading to such an excess expenditure and makes such recommendations as the Committee may deem fit.

The Public Accounts Committee is a Committee of Lok Sabha with which some Members of Rajya Sabha are also associated. The Committee consists of 15 Members of Lok Sabha who are elected by the House from amongst themselves according to the principle of proportional representation by means of a single transferable vote. After the election of the Committee the Lok Sabha every year passes a resolution requesting the Rajya Sabha to nominate 7 Members to associate with the Public Accounts Committee in its work. The Rajya Sabha concurring in the resolution nominates the Members for a term of one year.

In the U.K., the Public Accounts Committee consists of the Members of the House of Commons only and the House of Lords has nothing to do with it. In India, although Lok Sabha has full and final powers in monetary and financial matters the association of Members of Rajya Sabha has been agreed to by the Lok Sabha on the ground that the appropriation accounts and the audit reports are also required under the Constitution to be laid before Rajya Sabha and therefore, when a question arose whether the Rajya Sabha should have a separate Committee to Examine the same

accounts and audit reports, it was decided by mutual consultation by the two Houses that the best way to resolve the matter was to allow certain number of members of the Rajya Sabha to associate with the Members of the Public Accounts Committee by means of a resolution initiated by Lok Sabha to be concurred in by Rajya Sabha.

The Public Accounts Committee is assisted by the Comptroller and Auditor-General in its deliberations. He is present at the meeting of the Committee. The Committee is a powerful instrument in the hands of the House because it is through this Committee that the accountability of Government to Parliament in the matter of expenditure is ensured. The Committee acts as a deterrent.

The Public Accounts Committee appoints Working Groups to study particular parts of appropriation accounts and audit reports thereon. These Working Groups also visit out-stations and perform, more or less, the same functions as the Study Committees of the Estimates Committee. Where the matter is to be examined in detail the Public Accounts Committee may appoint a sub-committee to go into the matter. In that case the sub-committee is formally appointed with a Chairman of its own, and is given specific terms of reference. The sub-committee studies the subject and takes evidence, if necessary, and makes a formal report to the whole Committee. The whole Committee then examines the report of the sub-committee and adopts it either *in toto* or with modifications. Thereafter it becomes the report of the whole Committee. With regard to the powers of the Public Accounts Committee and action taken to implement their recommendations and other allied matters, the position is the same as in regard to the Estimates Committee, which I have described to you earlier.

I shall now be pleased to answer your questions :

Shri Pal : Does the discretion lie with the Ministry to show the files ?

Shri S. L. Shakdher : If the Committee wants to see a file, the Secretary of the Ministry normally shows it to the Chairman and the Chairman may, after perusal, decide whether it should be shown to the Committee If he does not think it necessary he will explain the position to the Committee. If the Secretary of the Ministry

feels that the file asked for cannot be shown because its disclosure will be prejudicial to the safety of the State, he will submit the matter to his Minister and if he also agrees with the opinion of the Secretary, then the Minister will forward a certificate to that effect to the Committee and the Committee is bound by that certificate. If the Secretary of the Ministry feels that the file is of secret and confidential nature, he may, after discussing with his Minister, show the file to the Chairman with the request that the file is only for his perusal and its contents should not be divulged to the Committee. The Chairman, if he agrees with the views of the Ministry, will explain the position to the Committee and the Committee may drop the matter; but if the Chairman does not agree with the views of the Ministry, the Minister may submit the matter to the Speaker for his guidance. So far no such case has arisen where the Ministry has found it necessary to refer the matter to the Speaker.

Shri Bhownick : It was decided by the conference of Chairmen of Public Accounts Committees that unless the security of the State is involved, all papers should be shown to the Committee.

Shri S.L. Shakdher : The Committee has the power to send for persons, papers or records subject to the condition that the Government may decline to produce a document on the ground that its disclosure will be prejudicial to the safety or interest of the State, but in practice the Committee does not ask for files unless it feels that without it the Committee cannot come to correct conclusions. At the Centre during the last few years very few cases have arisen where the Committee has found it necessary to call for files. All these matters rest on convention and the Committee and Government work in co-operation.

Shri Venkataramanan : The Chairman of the Committee in our State is the Leader of the Opposition. When he asks for a file containing noting by the Minister (the Minister may have recorded decision against the advice), we do not show it to him. The view now taken is that if noting is not shown the Committee cannot function.

Shri S.L. Shakdher : We receive similar references from State Governments and State Legislatures. Our view is that the file should not be demanded as a matter of course. Files should be called for in exceptional cases only as I have explained earlier. In

the U.K., the Leader of the Opposition is the Chairman of the Public Accounts Committee but that Committee does not normally ask for files. They may do so in exceptional cases. The normal procedure for our Committees is that they ask for memoranda from the Ministries. They also send questionnaires to them to which the Ministries give written replies. Departmental officers also appear before the Committees to give evidence. All this information constitutes sufficient material for the Committee to come to conclusions and the Committee does not normally go behind the memoranda or written or oral replies unless it feels suspicious and has a strong *prima facie* reason to believe that the material supplied to it is not in conformity with the original documents and, therefore, the Committee's work would be rendered ineffective if the original papers were not produced. Such cases should be very rare indeed because the officers who appear before the Committee or supply material to the Committee are high officials of the rank of Secretary or Joint Secretary of the Ministry and are responsible officials.

One Member : Does it mean that the convention is that the Committee does not ask for files ?

Shri S.L. Shakdher : I have not said that files should not be asked for whenever it is relevant to the work of the Committee. What I meant was that such requests should be kept to the absolute minimum and confined to such cases where the Committee cannot complete their work without consulting the original papers The main idea behind keeping such requests to the minimum is that Parliament or its Committees should not get mixed up with the executive, *i.e.* Paliament and its Committees may criticise the Government on the facts supplied to them; they should not probe into the facts and establish for themselves whether the facts as given by the Government are corroborated by the records in their possession. That is not the function of either Paliament or its Committees. In that way there will be no line of demarcation between the executive and Parliament and in the process Parliament and its Committees may lose their character and the real purpose of parliamentary democracy be defeated. Parliament and its Committees should never get involved with the executive at any stage. They should always reserve the right to criticise after decisions have been taken, and they should never create a situation where they have to share responsibility with the executive. That should

be scrupulously avoided. Parliament and its Committees should come in only when something grave has happened and Government has said something which is patently wrong and it becomes necessary for the Committee to go into the facts. Our experience at the Centre is that Government and its officers are anxious give all the facts which are necsssary for the Committee to come to its conclusions and the Committee on their part have refrained from probing into the matters to establish the *bona fide* of the Government or its officers.

Question : But then at the Centre the Chairman is a member of the Ruling Party and therefore is in a position to follow the procedure which you have described ?

Shri S.L. Shakdher : Chairman of the Comittee acts impartially. It is not a question whether he is a Member of the Ruling Party or of the Opposition. One of the members of the Opposition had been in the past a Chairman of the Committee on Subordinate Legislation, which is as powerful in the field of delegated legislation as the Committee on Estimates and Public Accounts are in the field of finance. It would be incorrect to say that Government did not supply all the information to that Committee. Government give facts and material irrespective of who the Chairman of the Committee is. At any time a member from the Opposition may become Chairman of the Public Accounts Committee or Estimates Committee. Therefore, it will not be right to say that Government will make discrimination at that time. Government in fact, do not bother who the Chairman of the Committee is or in fact who the Members of the Committee are. They supply all the information, and give facts asked for by the Committee. Healthy conventions have to be built.

Question : Does it mean that files will not be supplied even if the Committee feel that something is patently wrong and the officers are not giving correct facts ?

Shri S. L. Shakdher : As I told you, in such cases the Committee will be justified in asking for papers. Some years ago a case happened in our Public Accounts Committee. The Secretary of a Ministry stated before the Committee that a particular decision had been arrived at after the Minister and the Cabinet had approved the proposals. Now the Members of the Committee had some doubt on that matter and some of them had some inside information that that was not a fact. The Committee therefore insisted that the original

papers should be shown to the Committee. The Government complied with the request and the files were shown.

The Committee could have followed another course also. They could have written in the report that they had doubts in regard to the facts disclosed before them and that they would suggest that the Prime Minister should call for the papers and examine whether the statement made by the witnesses before the Committee was correct or not. That could be an alternative method if the Committee did not wish to call for the original papers themselves.

One Member : Then it is a case for the Criminal Courts.

Shri S. L. Shakdher : It is not so easy as that. It is not that the officers were deliberately telling a lie. As you know officers change and when a matter comes up before the Committee after many years the officers giving evidence may not have had the background and may not be aware of all the facts and, therefore, their statements may not be completely in accordance with the facts. One has to examine all the circumstances of the case and then come to conclusions.

One Member: After six months one can hardly say what the Secretary or the Chief Minister wrote on the particular file. If the Secretary is xpected to make a statement before the Committee he must refresh his memory.

Shri S. L. Shakdher : That is right. Even so, allowance must be made for human failings.

Shri Bhargava : There might be a convention that if the Committee has a doubt they may ask the Secretary to look up the matter and come up again.

Shri S. L. Shakdher : That is always done. The Committee does ask the witness to clarify their doubts and in that process the witness asks for time to examine the papers again and to present his views later on either in writing or orally, but a case may arise where a departmental witness may persist that his statement of facts is true and the Committee may also persist that it has its doubts. In such a case the matter can either be clarified on looking into the original papers or by making a report as I told you before.

Shri Bhargava : If he refreshes his memory he may change his opinion.

One Member : There must be a finality at certain stage. The departmental Secretary may refresh his memory and after that he may say that these are the facts but we must stop at some stage.

Shri S. L. Shakdher : The Committee does not say that it does not believe in the departmental witness. It merely gives a factual account of what has happened and leaves the matter to be further examined by Government. The departmental witness can make a submission to the Committee that after looking into the papers he has some new facts or revised facts to be placed before the Committee. The Committee is always willing to hear the departmental witness and to accept the revised facts until it makes the final report. So far as the Estimates Committee is concerned, even after the draft report has been prepared the department concerned has an opportunity to correct the facts at that stage. As I told you earlier, the reports of the Estimates Committee are sent to the Department concerned for factual verification and even at that stage if the Department has to give some more facts or revised facts to the Committee, the Committee will always reconsider the position. In the case of Public Accounts Committee, however, the draft report is seen by the Comptroller and Auditor-General and it is the practice that all facts in that report are checked by the Audit Department. If they are in doubt about any particular matter, they can always get the facts from the Ministry or the Department concerned before placing them before the Public Accounts Committee for incorporation in their report.

All these conventions and practices that have grown at the Centre are discussed in detail at the conferences of the Chairman of Estimates Committees and Public Accounts Committees. The States do follow the same procedure as it obtains at the Centre because it has been evolved out of experience and has stood the test of time. The States, of course, are not bound by the conventions and practices at the Centre and they adopt them if they are convinced that they are good in their own circumstances. In addition to these conferences, we have got the Speakers' Conference annually and there are mutual visits from the State Committees to the Central Committee and *vice versa* ; visits of the State Officials who are dealing with these Committees to the Centre for study and discussion and all these various methods help to evolve a common procedure.

Question : Are the draft reports of the Estimates and Public Accounts Committee are sent to the Ministries ?

Shri S. L. Shakdher : The draft reports of the Estimates Committee are sent to the Ministries concerned for factual verification. In the case of the Public Accounts Committee the reports are not sent to the Ministries because the Comptroller and Auditor-General goes into the report in detail and corrects factual inaccuracies, if any. In the House of Commons the draft Reports of the Committee are not sent to the Ministries for factual verification. We wanted to avoid unnecessary conflict between the departments and the Committees on the correctness of facts so that attention may be concentrated on the implementation of recommendations.

Shri Pal : After all the Demands have been passed and the Appropriation Bill introduced, is there discussion on the Appropriation Bill ?

Shri S. L. Shakdher : Theoretically the House is at liberty to discuss that Bill as any other Bill. The convention, however, is that the Speaker allows discussion on such matters only as are not covered by the discussion on the mands. A member who wishes to have a discussion on the Appropriation Bill gives a list of points in advance. The Speaker examines whether any of these points have been discussed. If some points have not been discussed already he allows the discussion which is confined to those points only.

Shri Bhargava : There is restriction of time also and nobody can exceed that time.

Shri S. L. Shakdher : That is true. The wole time-table is laid down in advance and all the financial business is to be completed within that time. At the appointed hour, therefore, the discussion is brought to an end by the Speaker by putting the question to the vote of the House.

Shri Bhowmick : In States there are any number of cut motions.

Shri S L. Shkdher : There are, as I told you, a large number of cut motions given notice of in our House also. A number of them are also moved. Sometimes these cut motions are helpful to the Minister because he knows in advance what points are agitating the minds of Members and he comes prepared with the answers so that he can take effective part in the discussion.

Shri Bhowmick ; There should be some procedure by which cut motions could be selected, as the Speaker cannot obviously allow all the cut motions.

Shri Bhargava : Cut motions should be very specific so that the Minister is prepared before hand.

Shri S. L. Shakdher : Cut motions are always specific and they give the point in precise terms which the member wishes to raise. The selection of cut motions cannot be made unless the Opposition co-operate and select the points on which they want to have discussion. Where there is one party in Opposition, such an arrangement is possible and should be done but where there are a number of Opposition parties and groups, each disagreeing with the policy of the other, it is difficult for them to come to common arrangements. Each Group or Party makes the selection of its own and in the result a number of cut motions are moved. The Minister, however, ought to know which cut motions are important and are likely to be raised. In the House of Commons, Ministers do not ask the Departments to prepare elaborate notes and briefs on the points likely to be raised in discussion. When the discussion proceeds, the Minister jots down a few points on which he wants to have further information, because normally the Minister has most of the information in his possession. He then asks his Private Secretary, who is sitting in the Official Gallery, to contact the Officers concerned and get the information over the telephone. The Private Secretary is quite efficient. He gets the information quickly on telephone and passes it on to the Minister. Here the position is different, as a number of senior officials sit in the Official Gallery and they pass on chits to the Ministers and keep them informed of the points raised in the House and the material for answer on those points. This procedure is wasteful of the time of the senior officials and in due course will have to be changed.

Shri Bhowmick : Before passing the Appropriation Bill can Government issue sanctions in advance so that the subordinate authorities are in readiness to implement the scheme as soon as the Bill has been passed ?

Shri S. L. Shakdher : Government can issue sanctions in advance within the estimates proposed by them but no one can operate on those sanctions until the Appropriation Bill has been passed, because money cannot be withdrawn from the Consolidated Fund before the passage of the Appropriation Bill. There should be no objection from constitutional point of view because after the demands have been voted by the House, they automatically find a place in the Appropriation Bill and Parliament has no power thereafter to vary the

amounts or modify them in any respect. Therefore, Government can issue instructions based on the amounts voted by the House on demands. The only restriction is that no one can draw the money until the Appropriation Bill has been passed.

Question : Why do we show the charged expenditure in the Appropriation Bill ? Is it necessary to do so ?

Shri S. L. Shakdher : Unless the Appropriation Bill is passed by Parliament, even the charged expenditure cannot be drawn from the Consolidated Fund.

Shri Bhargava : How is re-appropriation done ?

Shri S.L. Shakdher : No re-appropriation can be done between the Grants. Lok Sabha does not concern itself with re-appropriations within the Grants. That, properly speaking is the function of the President. The Finance Ministry on behalf of the President has laid down certain rules of re-appropriation and delegated powers to the various Ministries in this respect.

Shri Ramayyah : I think in one Legislature the Appropriation Bill was not assented to by Government before 31st March and the Government incurred the expenditure.

Shri S. L. Shakdher : That becomes excess expenditure because Parliamentary sanction to cover the expenditure is not there. In that case the matter will have to be placed before the Public Accounts Committee and the House will act on their advice.